THE RED MAN

An Illustrated Magazine Printed by Indians

MAY-JUNE 1917

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ENTHUSIASM is the thing which makes the world go round. Without its driving power nothing worth doing has ever been done. Love, friendship, religion, altruism, devotion to career or hobby—all these, and most of the other good things in life, are forms of enthusiasm.

ROBERT HAVEN SCHAUFFLER

A magazine issued in the interest of the Native American

The Red Man

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Contents:

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The Deep Creek Reservation and Its Indians:

By Albert B. Reagan.

ONE hundred and fifty miles southwest of Salt Lake City, eight miles east of the western boundary of Utah and seventy miles south of Wendover Station on the Western Pacific railroad, is a north and south mountain range called the Deep Creek range. It is one of the Basin ranges and is the result of a gigantic normal fault on its western down-throw side. The escarpment shows a displacement of about fourteen thousand feet, six thousand feet of which still remain, the crest rising six thousand feet above the Deep Creek valley to the westward. The fault-block is tilted eastward, gradually sloping to the foot of the Fish Spring range, to which it is a down-throw side. The main ridge culminates in Bald Mountain (eleven thousand feet in altitude), and Haystack or Ibapah Peak (twelve thousand one hundred and one feet in height). At the south treminus of the range a succession of faulting brings in a succession of westward fault-block spurs with eastward dipping strata, known collectively as the Spring Creek range. Another spur leading off eastward from Goodwin (Gold Hill) is known as the Clifton Mountains. The whole mountain series is the result of a succession of north and south faults with strata dipping at a high angle to the eastward.

The Deep Creek valley west of the mountains is comprised of an ancient lake area surrounded in the main by the Deep Creek and Spring Creek ranges of mountains. This strip is drained by Deep Creek and its tributaries and is called "Lower Egypt" on account of its fertility, while the mountain districts amply take care of the country's stock. Among the settlers of the valley are George Etta, John Erickson, Cooks, Hibbards, Lees, Probert, Stuart, the Kelleys,

George Fergison, the Felts, Sniveleys, Hutsons, Bonamonts, Mulners, Sheridans, Mr. Hiks, Wade Perish, and the Weavers. The Deep Creek Indian Reservation also occupies one and three-fourths townships in the south-central part of the region.

Geological Formations.

THE west face of the main range is granite. The east and south slopes are clastic rocks as are the rocks in the Spring Creek range. The Clifton-Gold Hill region is granite with numerous intrusions of porphyries and quartz-lime dikes. East and north of the mountains are Bonneville deposits, while those in the Deep Creek valley are Quaternary and Tertiary in age.

Archaeon.

THE west face of the main ridge of the Deep Creek range is granite from near the Queen of Sheba mine north to the Juab County line, a distance of about seven miles. The area is about three miles in width from east to west. This granite is light of color. A dark colored plutonic rock is exposed at Crow Springs west of the Spring Creek range and is probably Archaen in age, as the superimposed in place upon it. The area exposed here is very small.

Algonkin (?)

AT THE Queen of Sheba mine a fourteen hundred and fifty-six foot tunnel was driven into the mountain side to tap the main vein from a lower level. The first one thousand feet of the tunnel showed course grained granite, the rest quartzite to shistose-quartzite (Algonkin?) wedged with intrusive granite dikes.

Clifton Formation.

THE formation in Gold Hill-Clifton region is granite with numerous intrusions of porphyries and quartz-lime dikes. This formation is probably Archaeon or Algonkian in age. The principal mines of the region are located in this district.

Silurian.

EXTENDING down the west face of the mountain range for about six miles from the northeast corner of the Deep Creek Indian Reservation is a narrow strip of limestone in which the writer found *Halysites* resembling *Halysites Catenulata* which seems to place this rock series as Silurian in age.

Mississippian.

IN THE Spring Creek region and southward are limestone exposures capped in places with very hard sandstone leaning toward a quartzite. The strata are thick to rather thin beded, and coarse grained in texture. At a few places intercalated beds of shale appear, while along the main ridge of the Deep Creek range the western fault forms great limestone bluffs; limestone conglomerate and chert pebbles are also prominent rock exposures. Shell beds are also occasionally conspicuous. The formation, by comparison, seems to be the same as the limestone of the Canyon Range of west-central Utah which has been described by G. F. Loughlin* as "clearly of lower Mississippi or Madison facies", though the upper part is probably Pennsylvanian and some of the lower strata pre-Mississippian in age. The formation is probably two thousand feet in thickness.

This formation is much broken, faulted, and fissured and possesses subterranean passages and extensive caves. Johnson Creek is swallowed up in one of these subterranean passages and likely comes out in the numerous springs below the range. Moreover, in the crevices and underground passages along the contact line between the quartzite and the lime formation there are lodes of lead and lead-silver ore, as will be mentioned later.

Quartzite.

OVERLYING the limestone above described, is a series of red quartzites abutting the granite ridge south of the Queen of Sheba mine, extending eastward to the foot of the mountain and southward as far as visited. The early geologist who visited the region believed the quartzite to be beneath the limestone formation and mapped it as middle and upper Ordovican. *

But after going over the region and also comparing Mr. Loughlin's paper with reference to the quartzite of the Canyon Range, † he is lead the believe that the quartzite under consideration is upper Mississippian and Pennsylvanian in age.

Carboniferous (Undivided).

IN THE curved mountain area from near Trout Creek to the Nevada line and then down same about all the way to Wendover,

*A Reconnaissance in the Canyon Range, West Central Utah, Professional Paper 90—F P. P. 53, 54.

*See U. S. Geological Survey Professional Paper 71, Plate C.

†Loc. cit. pp 54, 55.

thirty miles farther than our map shows, limestone and other clastic rocks are shown that appear to be of Carboniferous age, but no fossils were obtained and their definite location in the Carboniferous system was not determined. In appearance the series along the state line resembled the Aubrey of the Fort Apache region. The formation is very thick.

Tertiary and Later Eflusive Rocks.

VOLCANIC rocks were encountered about Ferber and northwest of Eight Mile Station. From examination they appeared to be Tertiary in age.

Indian Mound on the reservation near the Nevada line appears to be an extinct volcano of Tertiary age.

Tertiary Deposits.

THE inner ancient laked region is composed of partly lithified sand and clay of a lightish color, some of it approaching the "mortar bed" formation of Kansas and Nebraska. The formation is probobly hundreds of feet thick and ranges from the Pliocene at the surface to probably Eocene at base. The springs of the region with few exceptions come to the surface through this formation.

Bonneville.

THE Bonneville formation covers all the region north and east of the Deep Creek range. It is the formation mapped by Gilbert as Bonneville and is composed of unlithified sands and clays. The ancient lake beach shows very conspicuously everywhere. This formation extends over the low divide into the Deep Creek region at several places, the remains now being patchy. The formation is, of course, Quaternary.

Glacial.

A V-SHAPED area extending westward from Mount Ibapah and Bald Mountain to beyond Fifteen Mile Creek west of the Ghoshute Agency shows every evidence of glaciation. Besides the boulder clay, and conspicuous morainal material, the whole area is strewn over with striated boulders even as big as common houses. The glacier seems to have determined the location of Fifteen Mile Creek.

The Bench—Quaternary.

TOWARD the highlands the benches and foot hills are covered with coarse sand and gravel. Also in the Johnson Creek and

Spring Creek sections, and south of the upper course of Fifteen Mile Creek, the whole region is covered with water-worn cobbles. A well near the head of Spring Creek gave thirty feet of cobbles and did not reach through the deposit. Alluvial fans, consisting of heterogeneous masses of coarse sand, gravel, and cobbles were also conspicuous near the mountains and about the mouths of the canyons. The thickness of the formation varies from a few inches to probably fifty feet.

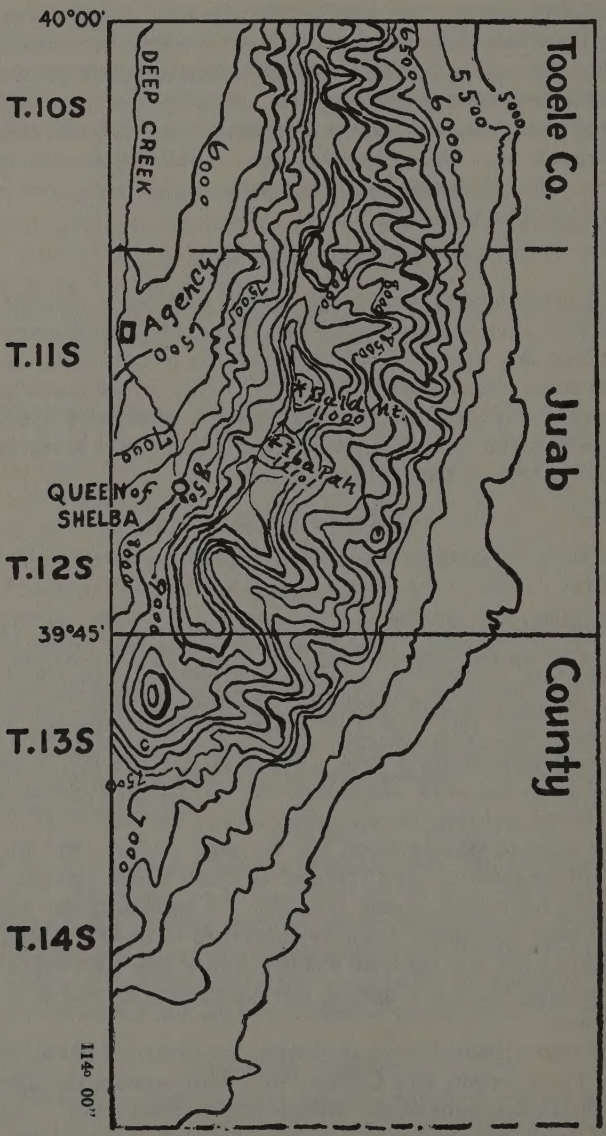
The Valley Quaternary.

THE broad central floor of the ancient lake bed is covered with a few inches to a few feet of loam, often of the adobe type. In the valleys this deposit is composed chiefly of sand and clay loam varying from a few inches to fifty feet. Also in the lower section of the laked area the prevailing southwesterly winds have filled it up to a great thickness. It is quite probable that a part of the formation here is of the Bonneville stage.

Mineral Wealth.

SOME sixty years ago the Indians discovered ore of the lead-silver variety in the Deep Creek range and, through not knowing its value, showed the ore to some of the white settlers. A mining craze followed. The Queen of Sheba and Spring Creek districts were prospected, actual mining begun, and about fifty mining claims, all within the limit of the present Indian reservation, were patented. Ore was then found at Gold Hill and great excitement followed for a time. But as all the ore in the district was low grade the work was abandoned, on account of the increased cost of living and long transporation across the Salt Lake Desert seventy miles to Wendover on the Western Pacific. But the discovery of tungsten at Gold Hill and at Trout Creek last year gave a new impetus to the mining interests. A million dollar railroad has just been completed from Wendover to Gold Hill (Goodwin), and within a few months from a single house (the post office) and a few mining shacks, a mining city has sprung up and all is rush and bustle.

The four principal mineral districts are Queen of Sheba, Spring Creek, Trout Creek, and Clifton Gold Hill section, the first two being within the limits of the present Indian reservation. Following is a short description of each.



Topographic Map of the Deep Creek Range, Utah.

Queen of Sheba Mining District.

THIS district is of interest as it lies within the limits of the Deep Creek Reservation. It is situated at the head of Fifteen Mile Creek southeast of Ibapah Peak. In this region the following mining claims have been patented: the M. Merrill mine; the Queen of Sheba mine (two claims); and the Queen's Minister mine. The claims are contiguous and of similar formation.

The Queen of Sheba mine is the oldest mine and the only one which has had extensive development work done.

The original Queen of Sheba mine was opened up about twenty-five years ago. A Mr. Haven was the first man to work it. Mr. Rutlege, followed by Mr. Lauten did development work and got out considerable gold. Messrs. Lauten and Palmer are the principal owners of the mine now.

The mouth of the original mine was eight hundred feet up the mountain side from the present mouth. The mineral, until the fall of 1914, was separated by the stamp-quicksilver system, the ore being of the free-milling variety. The stamp mill is one and one half miles down the canyon from the mine. The old system had a tramway from the mine to a level fifteen hundred feet below in the canyon, and from there the ore was hauled to the mill with a wagon. The tramway proved too expensive. Also, it was believed that by driving a tunnel into the ore body at a lower level, better results could be obtained. As a result of this conclusion, a tunnel ten hundred and eighty feet in horizontal length and a three hundred and seventy-six feet raised-slant shaft was completed in 1914 at a cost of twenty-five thousand dollars. A new road costing one thousand dollars was also made to the mouth of the tunnel, and over it the ore (fifty tons per day) was hauled to the mill. This made the hauling of the ore much cheaper than formerly and also gave a better access to the ore body itself.

The first one thousand feet of the tunnel shows coarse grained granite, the rest quartzite to shistose-quartzite (Algonkin?) wedged with intrusive granite dikes.

The ore vein has a trend of north sixty-three degrees and a dip of forty-three degrees nearly east. The vein is brown to gray quartz. It is of the free-milling gold variety, although it contains some gold sulphide. The width of the vein varies but averages from fourteen to twenty-five feet. The ore is low grade, contain-

ing from five to fourteen dollars in gold (or better), also some silver, lead, and antimony.

Mr. C. E. Johnson operated the mine in 1914 and 1915 with the aid of Mr. F. S. Sherman. But on account of the high prices and the long haul to Wendover, the mine was closed in the fall of 1915. The work will be resumed soon, now that the railroad terminus is near it.

The Spring Creek Mining District.

THIS district is also of interest as it is situated wholly within the boundaries of the Indian reservation. It lies on the east face of the Spring Creek spur of the Deep Creek range near the head of Johnson Creek. Silver-lead ore was discovered over thirty years ago and there was quite an excitement over the discovery. Some thirty claims were patented and several buildings, including an hotel, were erected. Then silver declined and the district was abandoned. Many of the claims are owned by Mr. M. Merrill; others by various parties. In 1915 Arthur Southerland and J. B. Thomas re-prospected the abandoned claims owned some thirty years formerly by S. S. Worthington of Grantsville, Utah, later by Gash Brothers of Ibapah, Utah, making a rich strike. In doing assessment work on one of the old claims they encountered a body of pure galena ore. They shipped a carload of this ore which smelted twenty-four dollars of silver to the ton. Since then they have driven a one hundred foot tunnel into this vein and have also discovered other valuable outcroppings. When visited by the writer everything indicated that the miners' expectation would be realized. The ore is in fissure and blanket veins in Mississippian limestone, along a contact between a quartzite ridge and the lime formation. Several car loads of low grade ore could be picked up as surface float in the vicinity.

Trout Creek Region.

THERE are outcroppings at Willow Springs and in the vicinity of Trout Creek on the east flank of the Deep Creek range. The ore at Willow Springs is copper, silver, and lead; that at Trout Creek paying tungsten.

The Clifton-Gold Hill District.

THIS district while off the reservation is of interest in showing the minerals that may be found on the reservation at the other

end of the same range of mountains; and also from the fact that the prospective value of these mines has brought the railroad forty-three miles nearer the Deep Creek reserve.

The minerals found here are extensive tungsten ledges, copper, silver, lead, gold, and molybdenum. The mines now developing and in operation are: The Copperopolis, Seminole Copper Company's property; the Glory Hole, the property of the Lucy L. Mining & Milling Company; Wilson Consolidated, property of the Woodman Mining Company; the Western Union, Gold Hill, Trip-Southerland Copper Company's property; and the property of the Western Pacific Copper Company. The region bids fair to be one of the richest mining regions in Utah.

Soil.

IT was the writer's intention to make a thorough study of the soil of the reservation to find out what crops would do best in the section. Pursuant with that intention he collected five soil samples and sent them to the Bureau of Soils, Washington, D. C.

Sample No. 1 was from the Stewart Ranch in the immediate Deep Creek valley, some four miles a little to the east of south of the Ibapah P. O. It is surface creek-wash and made up of both lime-gravel, and sandstone and granite debris pulverized by river action and the action of the air. The depth of the soil ranges from two to ten or more feet deep. Sample taken from the surface.

Specimen No. 2 was taken from the center of the School Farm of the Deep Creek Indian Day School to the west of the Fifteen Mile Creek about three-fourths of a mile northwest of the school and agency. The specimen is weathered detritus from the mountains to the south which, in the immediate vicinity, are mostly limestone, although some sandstone and granite are exposed. The formation appears to be Mississippian in age.

Specimen No. 3 was taken from Mr. Ike Lee's ranch on Johnson Creek fifteen miles south of Ibapah P. O. It was secured on a bench near Mr. Lee's house to the east of Johnson Creek. The soil here appears, in the main, to be weathered Palaeozoic rocks. It is about a foot thick; constituency, clay.

Specimen No. 4 was taken from four inches beneath the surface, (the thrown-over part of a four-inch furrow), one hundred feet northwest of the agency residence at the Deep Creek Indian School, twelve miles south of Ibapah P. O., Juab County, Utah. The soil is

shallow, ranging from one foot to a few inches down to rock or hardpan. This soil is from weathered granite of Archaean age.

Specimen No. 5 was taken from Annie's Tommy's Ranch in the bottom land just to the east of Fifteen Mile Creek and about one-half mile north of the Deep Creek Indian School at Indian Ranch some twelve miles south of Ibapah P. O. The specimen was taken from the surface and is composed principally of wash from the mountains. The mountains here are composed of Archaean granite and such Paleozoic rocks as sandstone, limestone, quartzites, etc.

The analysis of these soils gave the following:

Per cent of Oven Dried Soils.

Sample No. (on sacks).	K_2O	CaO	MgO	N (B. Chem)	P_2O_5
1	3.05	5.63	1.93	0.30	0.31
2	3.02	1.70	1.34	.11	.15
3	3.04	1.34	1.17	.11	.11
4	3.14	1.71	1.25	.10	.11
5	3.54	1.60	.51	.14	.19

Bridge tests do not show alkali.

Mechanical analysis of soils (fine earth) from Ibapah, Utah. (Deep Creek Indian Reserve.)

No.	Locality.	Fine gravel, 2 to 1 mm.	Coarse sand, 1 to 0.25 mm.	Medium sand, 0.5 to 0.25 mm.	Fine sand, 0.25 to 0.1 mm.	Very fine sand, 0.1 to 0.05 mm.	Silt, 0.05 to 0.005 mm.	Clay, 0.005 to 0 mm.	Organic Matter.
		Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
27496	(1)	3.4	4.1	2.6	8.2	4.9	51.4	18.3	5.92
27497	(2)	7.1	8.2	4.2	8.8	21.7	41.2	8.8	1.59
27498	(3)	4.1	5.2	4.0	8.0	19.6	41.6	17.8	1.31
27498½	(4)	8.4	8.5	5.4	13.4	19.9	32.3	11.8	1.30
27499	(5)	23.6	15.7	6.6	10.6	10.8	25.7	6.5	1.79

(1) Small amount of magnetite present. Quartz, biotite, and calcite are fairly plentiful. Muscovite is apparently less abundant than

biotite. Plagioclases, hornblende, traces of Spicules, some vegetable matter, traces of apitite, epidite, doubtful orthoclase, and very doubtful gypsum are present.

(2) Magnetite is present in larger quantities than in the preceding sample. Quartz, biotite, hornblende, calcite, muscovite, plagioclase, and microline are the common minerals present. Rutite, zincon, and orthoclase are present in very small amounts. Epidote occurs in traces. Vegetable matter and some few spicules are noted. Apparently calcite is considerably less abundant in this than in the preceding sample.

(4) Magnetite is comparatively abundant. Quartz, orthoclase, plagioclase, hornblende, biotite, vegetable matter, rare spicules, rare zincon, muscovite, and rare rutite are present.

(3) Magnetite is present in about the same amount as in sample No. 2. Quartz and biotite are the more usual minerals present. Hornblende, epidote, muscovite, rutite, and orthoclase occur in minor quantities. Some vegetable matter was noted.

Magnetite is present in about the same amount as in sample No. 4. Quartz is the most abundant mineral present. Orthoclase, biotite, some isotropic material of doubtful nature, rutite, hornblende, zincon, plagicoclase, epidote, vegetable matter, and a few spicule-like particles are present.

From the analysis it would appear that the soils are exceptionally rich in potash, fairly rich in lime, but not exceptionally rich in other constituents. There appears to be no alkali in the soil and there is no apparent reason why it should not be of value for general farm crops if properly treated. In fact, the analysis shows that these soils are well supplied with the elements of plant food except nitrogen and humus. These may be furnished by proper irrigation and by addition of barn yard manure or by the growing and plowing of green manure crops such as field peas, clover, alfalfa, or sweet clover, which has escaped from cultivation and grows everywhere in the region. This clover, though not used for a forage crop, grows luxuriantly, quickly, and produces an excellent yield. Should it be plowed under as a fertilizer, it would enable the operator to add large quantities of humus-forming material to the soil.

Water Supply.

As will be seen by a later part of this article, these Indians are supposed to get one-third of the water of the various upper tribu-

taries of Deep Creek. But much of this water is lost by underground drainage

All the streams lessen as they descend from the mountains. Johnson Creek sinks in a hole in the west wall of the canon about six miles above the agency and the waters of Deep Creek seldom reach much farther than Ibapah in the summer, being swallowed up even at flood time in the Salt Lake Desert.

Furthermore, the water which becomes underground drainage water in the upper country comes to the surface in springs in the lower districts. Johnson Creek undoubtedly comes out on the other side of Spring Creek. Also in the country still lower down there are numerous springs. Moreover, the water in the well at Sheridan's store at Deep Creek (Ibapah) comes within three feet of the top of the ground, and on the Bonamont ranch, some four miles farther north, there is a flowing well.

It is the writer's opinion that artesian water could be obtained on the reservation in quantity for irrigating purposes, as is indicated by the springs. It is also quite probably that water could be stored in some sections.

Timber.

There is a considerable timbered area. Pine and balsam are the principal merchantable varieties. There are several million feet of this timber which is now mature. In fact, there are now over a million feet of dead and down timber on the reservation that should be taken care of at once. The Government should put in a mill and have this timber sawed for use in buildings for the Indians and for Government use.

Antiquity.

In the long ago this was also an inhabited country. The cliff dwellers got this far north and here made their homes for ages. What became of them can only be conjectured. But they left their writings on the rocks and on the walls of their homes to attest their having been here. A rock three-fourths of a mile east of the Deep Creek Indian Agency displays their work. In the basin over Willow Springs Pass six miles to the eastward are numerous pictographs of this once dominant race. While at the head of Choke Cherry Creek in Nevada six miles southeast of the Indian Agency office are preserved the cliff house drawings of a happier day for the section.

Picture Cave.

These are exposed in a cliff cave. The cave is in yellow limestone in a branch canyon on the west side of the upper headwaters of Choke Cherry

Creek. The mouth of the cave faces the south, is forty feet long and ten feet high, but the roof pitches to the floor twenty feet inward. The drawings are on the back upper wall. They are made of large, wide, heavy lines, blotches, and crude drawings in red, yellow, and blue, apparently of mineral paint. Besides these, the whole roof face is run over in almost all directions by numerous black lines drawn in a permiscuous manner and apparently without design. The surface on which the drawings are made is much weathered and some of the pictographs can hardly be made out, or are entirely obliterated.

The Tradition About the Pictographs.

When I asked the Deep Creek Indians about these pictures they gave me the following myth concerning them:

"The pictographs are in caves along Warm Creek, also in the canyons of the Deep Creek range, and in the hills toward Pleasant Valley. They were made by short, heavy-set giants of the long-ago. The thunder bird preyed upon this people. Once my grandfather (grandfather of the spokesman)—you know my grandfather was a medicine man—had a dream to cure the sick. What he saw in this dream was his helper in driving the 'sick' out of people—his guiding spirit. At times when looking for his guiding spirit he would go out hunting in yonder (Ibapah Peak) mountains. Once while there fasting and praying he came along below a ridge on which the thunder bird had its nest. There he saw the bones of the little giants the great bird had discarded and thrown down from its nest after it had eaten all the flesh from them. The bones were many in number and very heavy. (Petrified: It is probable that the bones of some prehistoric animal may be exposed in some of the hills of these mountains and were seen by the medicine man.) These were the bones of the men who made the drawings in the caves and along the canyon walls."

The Shoshone-Goship Indians.

When the white man came he found the Shoshone-Goship Indians in possession. Below is a sketch of the same.

This group of Indians is locally known as the Goshute (Ghost Ute) Indians. From what the writer can learn they were first visited by the Mormons. At that time they dominated western Utah and eastern Nevada south of the Great Salt Lake desert far into the south half of these two states. After the discovery of gold in California the overland route was made through the center of the territory within thirteen miles of the present Indian reservation.

Following the middle of the last century these Indians began to commit depredations on the settlers and on the overland route. The overland station just over the pass in the Deep Creek range twenty-eight

miles east of here (the Deep Creek Indian Reservation office)was captured and burned and its inmates killed. This station was half way between Deep Creek (Ibapah P. O.) and Calleo eastward on the Lincoln Highway. It is now known as "Burned Station," formerly as Overland Pass. It is alleged that the Indians killed three soldiers and two stock tenders here, and that one soldier got away wounded. The soldiers were afterwards taken to Ft. Douglas to be buried. The civilians were buried near the ruins of the station and their grave still mark the spot. When attacked one white man retreated to a stall in the barn and killed several Indians with his knife before he was overcome. It is alleged that the Indians then cut out his heart and ate it to make them brave. After the raid the station was moved three miles eastward on to a ridge so as to make the view broader. The graves, a well, and part of a rock wall still mark the old station site to remind one of the old days.

Deep Station, twelve miles north of the agency, fared better, as there were more whites near it. But Eight Mile (Eagan) station, eight miles farther west on the present Lincoln Highway, while able to withstand the attacks had many a grim day. At one time on the route from Deep Creek station to Eight Mile the stage was attacked. The stage driver and the only passenger was killed, but the team, at a break-neck speed, rushed down the road and through the Eight Mile station gates with their dead. At about the same time the stage coming from the west to Eight Mile was attacked and the driver killed, but as in the previous case the frantic horses gained the station with the stage and their dead driver. The graves of these slaughtered men are just a little west of the old station house; and the old adobe fort, though now the residence of Mr. George Etta, has the bullet marks in its walls to remind one of the Indian attacks in these grim old days. It is alleged that the old Indians now living took part in the raids.

To stop the depredations the War Department rounded up the Indians and compelled them to make a treaty with the Government agreeing to cease hostile action in any way. And from what can be learned they have lived up to their side of the agreement.*

The goods and money-payment part of the treaty were all fulfilled and the Indians turned loose to look out for themselves many years ago. Then recently they were again segregated on reservations. A part of the tribe was placed on the Skull Valley Reserve near Grantsville, Utah, and the remainder were placed on the Deep Creek Reservation here.

Executive Order.

The Executive Order establishing the reservation reads as follows:

"It is hereby ordered that the following described lands in the State of Utah be, and the same is hereby, reserved from settlement, entry, sale, or

*Goship Indians, Hand Book, pp. 496, 497.

other distribution and set aside for the use and benefit of the Goshute and other Indians on the public domain in the State of Utah.

"All of township 11 south, range 10 west, except section 36; sections 2 and 11, inclusive, and sections 14 and 22, inclusive, township 12 south, range 19 west of the Salt Lake meridian.

"This order is subject to any prior, valid existing rights of any persons, and does not include any lands the title of which has passed from the United States.

"WOODROW WILSON.

"The White House, March 23, 1914.
"No. 1903."

Gosiute (Kutsip or gutsip, "ashes," "parched or dry earth," Ute—R. U. Chamberlain). A Shoshonean tribe formerly inhabiting Utah west of Salt and Utah lakes, and eastern Nevada. Jacob Forney, superintendent of Indian affairs for Utah, reported in 1858 that he had visited a small tribe called the Go-sha-utes, who lived about forty miles west of Salt Lake City. "They are," he says, "without exception the most miserable looking set of human beings I ever beheld. They have heretofore subsisted principally on snakes, lizzards, roots, etc." Writing in 1861, Burton (City of Saints, 475, 1862) says: "Gosh Yuta, or Gosha Ute, is a small band once protégés of the Shoshone, who have the same language and limits. Their principal chief died about five years ago, when the tribe was broken up. A body of sixty, under a peaceful leader, were settled permanently on the Indian farm at Deep Creek, and the remainder wandered forty to two hundred miles west of Salt Lake City. During the late tumults they have lost fifty warriors and are now reduced to about two hundred men. Like the Ghuzw of Arabia they strengthen themselves by admitting the outcasts of the other tribes and will presently become a mere banditta."

The agent in 1866 said they "are peaceable and loyal, striving to obtain their own living by tilling the soil and laboring for the whites whenever an opportunity presents, and producing almost entirely their own living."

In 1868 the superintendent of Utah Agency wrote of them: "These Indians range between the Great Salt Lake and the land of the western Shoshones. Many of them are quite industrious, maintaining themselves in good part by herding stock and other labors for the settlers." It appears that later they cultivated land to some extent, being scattered over the country where springs and streams afforded arable land. It is asserted by some authors that they are a mixture of Shoshone and Ute. Their language indicates a closer relationship with the Shoshone proper than with the Ute and Paiute, though they affiliate chiefly with the latter and have largely intermarried with them. According to Powell, they numbered four hundred and sixty in 1873. In 1885 they are said to number two hundred and fifty-six.

The following are divisions or sub-tribes: Pagayuats, Pierruiats, Torounto goats, Tuwurints, and Unkagarits.

Go-sha-utes—Forney in Ind. Aff. Rep., 212, 1858.
Goshee Utes—Hatch in Ind. Aff. Rep. 1863, 116, 1864.
Goshen Utes—Head, *ibid*, 1867, 174, 1868.
Goship—*Ibid*, 349, 1866.
Goship Shoshones—Sen. Misc. Doc. 136, 41st Cong., 2d. sess., 21, 1870.
Goship-Utes—Simpson, 1859, Rep. of Explor. across Utah, 36, 1876. (So named from Go-ship their chief.)
Goshiss—U. S. Statutes, xiii, 177, 1866.
Goshoots—Taylor in Cal. Farmer, June 26, 1863.
Go-shutes—Simpson, op. cit., 36.
Gosh Yuta—Burton, City of Saints, 475, 1862.
Go-si-Utes—Powell, in H. R. Misc. Dos. 86, 43d Cong., 1st sess., 6, 1874.
Gos-ta Utes—Huntington(1857) in H. R. Ex. Doc. 29, 37th Cong. 2d sess., 85, 1862.
Kusi-Utahs—Remy and Brenchley, Journ. to Great Salt Lake, II., 412, 1861.

As the Deep Creek section of the Goshutes began to civilize, they were gathered in by the Mormon Church at Deep Creek, and for a number of years they were fathered by the church there. Then they were moved up to the site of the present reserve, and the Mormon Church bought them a little tract of land there and also acquired the right to certain water for irrigation purposes. The church held the title to this land for a while, and then deeded it to the Indians. Soon, then, the white men began to encroach upon the Indian water rights. This led to a lengthy case of litigation in which the Indians won a third of all the water of the entire watershed and still hold the same with their newly constituted reserve.

The question of the right of the Indians to hunt on the reservation was brought up by State game wardens and the Indians carried the case to the Honorable Commissioner and won as per the letter of the Commissioner here copied:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 30, 1915.

LORENZO D. CREEL, *Special Indian Agent.*

My Dear Mr. Creel:—Your letter of September 6th, relative to hunting regulations on Deep Creek Reservation has been received.

It appears that Executive Order of May 29, 1912, certain described lands were "reserved from settlement, entry, sale, or other disposal and set aside for school, agency, and other necessary uses for the benefit of Indians on the public domain in the State of Utah, subject, however,to any valid existing rights of any person thereto." This order takes such

lands without the jurisdiction of the State, and therefore should Indians hunt thereon they would not be amenable to the State laws. They must, however, observe the Federal law relative to hunting and killing migratory birds, and should they dispose of their catch while off the reservation they should be subject to the State laws for having such game in their possession if in violation thereof. You should advise the Indians that they should observe the laws of the State so far as consistent with their rights and avoid any conflict with the State authorities.

Very truly, yours,

E. B. MERITT, *Acting Commissioner.*

Bush Fencing for Antelope.

At several places on the bench land rows of decayed brush were still noticeable. The writer thought at first that they were probably fences to keep sheep in bounds, but their very old appearance seemed to be against that theory. Upon asking the Indians about them they stated that they were antelope fences. They said that they were built in chute-shape on a large scale with an opening now and then. They said that although the antelope could jump, he would not attempt to go over the brush fence, but would follow it until he came to an opening through which he would pass to the other side. The Indians would hide near the openings, and when the antelope came they would kill it. Some of these brush fences are said to have been miles in length.

Cooking Ants and Ant Eggs.

In the Deep Creek country there is a large red ant that makes a large bushy mound for a home. In the old times the Goshutes used to go to these ant hills and collect the ants and the ant eggs in a basket, take them home and boil them into a soup which the people assured the writer was a delicious dish.

Dances.

The Goshutes have two dances of the old type which are occasionally indulged in. They are as follows:

The Bear Dance.

This is a peculiar dance in which the performers are arranged like the spokes of a wheel. The women face inward toward the hub, while the partner of each respective lady faces her as they hold each other's right hand or place the right hand on the partner's right shoulder. The writer has also seen a similar dance where the dancers danced only in parallel form on one side of the central fire. The dance is simply a backward and forward movement along the spoke-line. The lady advances five steps and her partner retrogrades, and then *vice versa*. A set lasts throughout the chanting of a single song. The men then take their seats and the women choose their partners for the next set. In doing this they simply

go to where the men are grouped and tap the one of their choice with the hand, and—sometimes they get left and have to dance the set alone. The hub is occupied by a central fire, around which the musicians and chanters squat.

As an accompaniment to the singing an inverted tub is used as a drum, across the edges of which are drawn notched hardwood sticks. The noise thus produced is a rumbling, terrible sound to the white man, but music to the Indian. The dance lasts throughout the night.

The Round Dance.

This dance is very similar to the Shoshone "Dragging Dance" and also resembles the Sioux "Ghost Dance" of 1889. It differs, however, in that no drum is used and in the fact that it is a choosing-partner dance. The women choose their partners by going to the circle and forcing themselves between their choice and the next dancer in the circle and locking arms with each. Sometimes the woman is rejected and is ejected from the circle as she is jeered by the spectators. Following is a description of the dance:

When all is ready, at about 9 p. m., the leaders walk out to the dance place and facing inward join hands so as to form a small circle. All these first actors are men. Then, without moving from their places, they sing the opening song in a sort of undertone. Having sung it through once, they raise their voices to their full strength and repeat it, this time slowly circling around in the dance. The step is very simple. The dancers move from right to left, following the course of the sun, advancing the left foot and following it with the right,hardly lifting the feet from the ground. Various songs are sung, all adapted to the simple measure of the dance step. As the song rises and swells, the people come singly and in groups from their several houses and tepees, and one after another joins the circle until any number from fifty to one hundred are in the dance. When the circle is small, each song is repeated through a number of circuits; if large, it is repeated through only one circuit, measured by the return of the leaders to the starting point. Each song is started in the same manner, first in an undertone while the singers stand still in their places and then with the full voice song the dancers begin to circle around. When once the dance begins it lasts throughout the remainder of the night. It leads toward the hypnotic and is vigorously performed.

Health.

In the way of health these are the healthiest Indians the writer has met in seventeen years in the Indian Service, yet an examination by Dr. Ferdinand Shoemaker, assistant medical supervisor of the Indian Service, shows that they are badly diseased. Out of sixty-four who were examined, twenty-seven had trachoma, five consumption, one hardening of the tissues, two enlarged glands, and three goiter.

An Appeal for Prenatal Care:

By Dr. Charles L. Zimmerman, Ponca Agency, Oklahoma.

THREE score and ten years ago a great American author and physician, Oliver Wendell Holmes, a man of intellect and skill, speaking of the care of the mother and her unborn child said, "No tongue can tell the heart-breaking calamity that the irreparable errors and wrongs of the practice of obstetrics have caused—they have closed the eyes just opened upon a new world of love and happiness—they have bowed the strength of manhood into the dust; they have cast the helplessness of infancy into the stranger's arms, or bequeathed it with less cruelty to the death of its dying parents. There is no tongue deep enough for regret, and no voice loud enough for warning."

The care of the mother demands at this day and age the best that the state or nation can afford. Facing a terrific war, a war which in those countries involved for the past three years has caused the death of millions of young men, we here in America must not let the lesson go unheeded. The perpetuation of the race demands that now as never before red man and white man must "Save the Babies." Long before America with her forces entered into the giant fray, the Commissioner of Indian Affairs, the Honorable Cato Sells, inaugurated this campaign and now its importance will be brought home to each and every one of those Americans who may have not fully grasped its eloquent significance at the date of its inception. To the American Army and Navy belongs the great and honorable name of "The First Line of Defense," but to the American baby, red or white, just as truthfully belongs the honor of being "The Last Line of Defense," and just as sturdy and just as healthy and just as well developed as is his lot, so strong and so powerful will be the nation of ours a score of years from now. In the babies of the land is the hope of the nation, and so let each and every Indian mother, father, or Indian Service employee have burned into his conscience the urgency and the importance of this praiseworthy campaign.

Let the Indian mother realize her great part in the upbuilding of the Nation. Let her seek by all means at her command to observe the laws of sanitation and hygiene, of medical skill and assistance. Let her believe with all her heart the gospel of a strong and healthy mother means a strong and healthy child and then will the American Indian attain as near as possible the goal of perfection.

Following are a list of rules which should be in the hands of every thoughful, child-loving expectant mother, and in the following of them lies results unobtainable any other way:

1. She should take plenty of exercise outdoors when the weather

is suitable but avoid over exertion. Walking is best, and all of the heavy work should be done by the husband—strange as it may seem.

2. Feed should be plain and wholesome and taken at regular meal times. Meats, salty foods, greasy foods, and acids, as vinegar should be avoided. She should drink two quarts of liquids, such as milk, tea, and water, a day.

3. The bowels should move regularly every day, and if not she should consult a doctor and obtain a laxative, or eat fruit.

4. In case of headache, seeing black spots or a sensation of feeling as if she were dizzy she should bring a specimen of her urine to the doctor.

5. In case of hemorrhage or bleeding she should go to bed, keep perfectly still,elevate the foot of the bed, and send for the doctor.

6. Sexual excitement should be avoided.

7. If the nipples are cracked a salve should be obtained from the doctor and the breast anointed.

8. When the baby is born extreme carefullness should be followed out in maintaining cleanliness.

Again let us not forget that other utterance of Holmes, "The woman about to become a mother, or with her new born infant upon her bosom, should be the object of trembling care and sympathy, wherever she bears her tender burden or stretches her aching limbs. God forbid, that any member of the profession to which she trusts her life, doubly precious at this time, should hazard it negligently, unadvisedly, or selfishly." The advantage of a well equipped hospital and of special obstetric skill if possible should be available when needed; for if to the soldier on his battlefield the Nation render efficient and scientific aid, then why not to the mothers of men who, through the silent watches of the night, battle bravely on that the future of the Nation may be assured.

Surely such a cause and such a call should not fall upon deaf ears. Life is real and life is earnest and the time is not far distant when motherhood will stand permanently forth as the greatest honor and the greatest deed of heroism on the pages of history. And so to the American Indian women of today this appeal is issued. Its reality is an appeal to reason, to love, and to that patriotic feeling which inspires men to go forth and if needs be to die for their country. So the American mother-to-be must learn to bring forth into the world a better baby, and then she must strive with all her heart and soul to "Save the Babies."

The conservation of mother and child, the future of the Nation, the laws of self-preservation and of self-reproduction are but Nature's teachings to which we must all give heed.

When the Sun Was a God:

By Garrett P. Serviss in the Boston American.

IT IS a long time since any discovery concerning ancient America has been made which is as interesting and important as that of a mysterious "sun temple" in the Mesa Verde National Park. It is also an entirely new thing in North American archaeology, and a fresh proof of the wealth of the great Southwest in buried and forgotten history.

The strange temple, for a temple it seems without doubt to have been, was excavated last summer under the direction of Dr. J. Walter Fewkes, of the Smithsonian Institution. It is situated on Cliff Canyon, opposite to the prehistoric ruin called " Cliff Palace," and in a neighborhood which was evidently once a centre of population for the mysterious people who left these surprising monuments of an America that has vanished under the waves of time.

It goes back to a period when the sun was worshipped on this continent, as it was worshipped by mankind in the earliest seats of civilization in the Old World. The most remarkable detail in the Mesa Verde sun temple is something which, in its character and origin, recalls the black meteoric stone in the Mohammedan temple at Mecca, which was sacred because it was fabled to have fallen from heaven.

The Mesa Verde relic is not a meteor but a huge fossilized palm leaf, whose rays resemble those of the sun. This was carefully set in masonry and enclosed on three sides by walls, so as to constitute a shrine.

Dr. Fewkes thinks that there can hardly be a doubt that solar rites (i. e., the ceremonies of sun worship) were performed about this strange object, which must have seemed to the worshippers to have been divinely formed, and given to them as an emblem, or symbol, of their religion.

Very likely they thought that, like the stone of Mecca, it had been cast down from Heaven. On their uninstructed and superstitious minds its rayed structure must have produced a profound impression. Examination by Mr. Knowlton of the National Museum in Washington has shown that the fossil was formed from a palm that flourished in the cretaceous age.

In America, no less than in all other parts of the world, the tendency to regard such objects with veneration and to make them symbols of religion or tribal unity was very marked. We have an example among the celebrated Five Nations of the Iroquois of New York State in the "Oneida Stone," now set up in a cemetery at Utica.

The Mesa Verde sun temple was of considerable size and complexity of structure. Its greatest length is nearly 122 feet and width 64 feet. Its masonry is the finest that has yet been discovered among the ruins of the Southwest. It lay buried under a mound before Dr. Fewkes unearthed it. It consists of about a thousand feet of walls, averaging four feet in thickness.

In some places these walls are yet ten or twelve feet in height, and Dr. Fewkes has found evidence that portions of them were carried up six feet higher by the builders. The general outline of the buliding is that of a capital D, laid on its side. Within the outer walls is another somewhat smaller D-shaped structure. There are, at one end and around the sides between the outer and inner walls, a number of small chambers, all of which it is believed were used for religious purposes.

There are also three circular chambers, two with the main building and one at some distance outside. The latter resembles the base of a round, hollow tower. In all there are twenty-three rooms in or associated with the temple.

Dr. Fewkes is of the opinion that the entire structure was given up to religious uses, and was not inhabited as a dwelling place, like the other ruined buildings in the neighborhood. If this were so, then we have here a building as distinctly set aside for the ceremonies of worship as a Greek or Egyptian temple or a modern church.

Only more or less probable estimates can be made of the age of this monument. A red cedar tree found growing in the heap of débris near the top of the highest wall of a portion of the ruins showed rings of growth proving that it was at least 360 years old. Other indications lead Dr. Fewkes to carry back the date of the building about the year 1300 A. D., or some two hundred years before Columbus. But its antiquity may be still greater.

Who were the builders? That, too, is a question that cannot yet be definitely answered, but Dr. Fewkes inclines to believe that the structure was erected by the same people who built the better known cliff dwellings in the same region. There are nine other mounds in that region awaiting exploration.

A road has already been constructed to enable automobiles to pass all around the ruins of the temple, which have been made secure against the weather.

Important Court Decision Relating to Indians.

UNITED STATES *v.* KAGAMA & Another, Indians.

Opinion of the Court.—Decided May 10, 1886.

MR. JUSTICE MILLER delivered the opinion of the court.

The case is brought here by certificate of division of opinion between the Circuit Judge and the District Judge holding the Circuit Court of the United States for District of California.

The questions certified arise on a demurrer to an indictment against two Indians for murder committed on the Indian reservation of Hoopa Valley, in the State of California, the person murdered being also an Indian of said reservation.

Though there are six questions certified as the subject of difference, the point of them all is well set out in the third and sixth, which are as follows:

"3. Whether the provisions of said section 9, (of the act of Congress of March 3, 1885,) making it a crime for one Indian to commit murder upon another Indian, upon an Indian reservation situated wholly within the limits of a State of the Union, and making such Indian so committing the crime of murder within and upon such Indian reservation 'subject to the same laws' and subject to be 'tried in the same courts, and in the same manner, and subject to the same penalties as are all other persons' committing the crime of murder 'within the exclusive jurisdiction of the United States,' is a constitutional and valid law of the United States?"

"6. Whether the courts of the United States have jurisdiction or authority to try and punish an Indian belonging to an Indian tribe for committing the crime of murder upon another Indian belonging to the same Indian tribe, both sustaining the usual tribal relations, said crime having been committed upon an Indian reservation made and set apart for use of the Indian tribe to which said Indians both belong?"

The indictment sets out in two courts that Kagama, alias Pactah Billy, an Indian, murdered Iyouse, alias Ike, another Indian, at Humboldt County, in the State of California, within the limits of the Hoopa Valley Reservation, and it charges Mahawaha, alias Ben, also an Indian, with aiding and abetting in the murder.

The law referred to in the certificate is the last section of the Indian appropriation act of that year, and is as follows:

"§9. That immediately upon and after the date of the passage of this act all Indians committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny, within any Territory of the United States, and either within or without the Indian reservation, shall be subject therefor to the laws of said Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner, and shall be subject to the same penalties, as all other persons charged with the commission of the said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person, within the bound-

aries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties, as all other persons committing any of the above crimes within the exclusive jurisdiction of the United States." 23 Stat. ch. 341, 362; §9, 385.

The above enactment is clearly separable into two distinct definitions of the conditions under which Indians may be punished for the same crimes as defined by the common law. The first of these is where the offence is committed within the limits of a territorial government, whether on or off an Indian reservation. In this class of cases the Indian charged with the crime shall be judged by the laws of the Territory on that subject, and tried by its courts. This proposition itself is new in legislation of Congress, which has heretofore only undertaken to punish an Indian who sustains the usual relation to his tribe, and who commits the offence in the Indian country, or on an Indian reservation, in exceptional cases; as where the offence was against the person or property of a white man, or was some violation of the trade and intercourse regulations imposed by Congress on the Indian tribes. It is new, because it now proposes to punish the offences when they are committed by one Indian on the person or property of another.

The second is where the offence is committed by one Indian against the person or property of another, within the limits of a State of the Union, but on an Indian reservation. In this case, of which the State and its tribunals would have jurisdiction if the offence was committed by a white man outside an Indian reservation, the courts of the United States are to exercise jurisdiction as if the offence had been committed at some place within the exclusive jurisdiction of the United States. The first clause subjects all Indians guilty of these crimes committed within the limits of a Territory, to the laws of that Territory, and to its courts for trial. The second, which applies solely to offences by Indians which are committed within the limits of a State and the limits of a reservation, subjects the offenders to the laws of the United States passed for the government of places under the exclusive jurisdiction of those laws, and to trial by the courts of the United States. This is a still further advance, as asserting this jurisdiction over the Indians within the limits of the States of the Union.

Although the offence charged in this indictment was committed within a State and not within a Territory, the considerations which are necessary to a solution of the problem in regard to the one must in a large degree affect the other.

The Constitution of the United States is almost silent in regard to the relations of the government which was established by it to the numerous tribes of Indians within its borders.

In declaring the basis on which representation in the lower branch of the Congress and direct taxation should be apportioned, it was fixed that it should be according to numbers, *excluding Indians not taxed*, which, of course, excluding nearly all of that race, but which meant that if there were such within a State as were taxed to support the government, they should be counted for representation, and in the computation for direct taxes levied by the United States. This expression, excluding Indians not taxed, is found in the XIVth amendment, where it deals with the same

subject under the new conditions produced by the emancipation of the slaves. Neither of these shed much light on the power of Congress over the Indians in their existence as tribes, distinct from the ordinary citizens of a State or Territory.

The mention of Indians in the Constitution which has received most attention is that found in the clause which gives Congress "power to regulate commerce with foreign nations and among the several States, and with the Indian tribes."

This clause is relied on in the argument in the present case, the proposition being that the statute under consideration is a regulation of commerce with the Indian tribes. But we think it would be a very strained construction of this clause, that a system of criminal laws for Indians living peaceably in their reservations, which left out the entire code of trade and intercourse laws justly enacted under that provision, and establish punishment for the common-law crimes of murder, manslaughter, arson, burglary, larceny, and the like, without any reference to their relation to any kind of commerce, was authorized by the grant of power to regulate commerce with the Indian tribes. While we are not able to see, in either of these clauses, of the Constitution and its amendments, any delegation of power to enact a code of criminal law for the punishment of the worst class of crimes known to civilized life when committed by Indians, there is a suggestion in the manner in which the Indian tribes are introduced into the clause, which may have a bearing on the subject before us. The commerce with foreign nations is distinctly stated as submitted to the control of Congress. Were the Indian tribes foreign nations? If so, they came within the first of the three classes of commerce mentioned, and did not need to be repeated as Indian tribes. Were they nations, in the minds of the framers of the Constitution? If so, the natural phrase would have been "foreign nations and Indian nations," or, in the terseness of language uniformity used by the framers of the instrument, it would naturally have been "foreign and Indian nations." And so in the case of *The Cherokee Nation* v. *The State of Georgia*, 5 Pet. 1, 20, brought in the Supreme Court of the United States under the declaration that the judicial power extends to suits between a State and foreign State, and giving to the Supreme Court original jurisdiction where a State is a party, it was conceded that Georgia as a State came within the clause, but held that the Cherokees were not a State or nation within the meaning of the Constitution, so as to be able to maintain the suit.

But these Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the Government of the United States, or of the States of the Union. There exist within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies with limited legislative functions, but they are all derived from, or exist in, subordination to one or the other of these. The territorial governments owe all their power to the statutes of the United States conferring on them the powers which they exercise, and which are liable to be withdrawn, modified, or repealed at any time by Congress. What authority the State government may have to enact criminal laws for the Indians will be presently considered. But this power of Congress to organize

territorial governments, and make laws for their inhabitants, arises not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the Territory and other property of the United States as from the ownership of the country in which the Territories are, and the right of exclusive sovereignty which must exist in the National Government, and can be found nowhere else. *Murphy* v. *Ramsey*, 114 U. S. 15, 44.

In the case of *American Ins. Co.* v. *Canter*, 1 Pet. 511, 542, in which the condition of the people of Florida, then under a territorial government, was under consideration, Marshall, Chief Justice, said: "Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire Territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned."

In the case of the *United States* v. *Rogers*, 4 How. 567, 572, where a white man pleaded in abatement to an indictment for murder committed in the country of the Cherokee Indians, that he had been adopted by and become a member of the Cherokee tribe, Chief Justice Taney said: "The country in which the crime is charged to have been committed is a part of the territory of the United States, and not within the limits of any particular State. It is true it is occupied by the Cherokee Indians. But it has been assigned to them by the United States as a place of domicil for the tribe and they hold with the assent of the United States, and under their authority." After referring to the policy of the European nations and the United States in asserting dominion over all the country discovered by them, and the justice of this course, he adds: "But had it been otherwise, and were the right and the propriety of exercising this power now open to question, yet it is a question for the lawmaking and political departments of the government, and not for the judicial. It is our duty to expound and execute the law as we find it, and we think it too firmly and clearly established to admit of dispute, that the Indian tribes, residing within the territorial limits of the United States, are subject to their authority, and when the country occupied by one of them is not within the limits of one of the States, Congress may by law punish any offence committed there, no matter whether the offender be a white man or an Indian."

The Indian reservation in the case before us is land bought by the United States from Mexico by the treaty of Guadaloupe Hidalgo, and the whole of California, with the allegiance of its inhabitants, many of whom were Indians, was transferred by that treaty to the United States.

The relation of the Indian tribes living within the borders of the United States, both before and since the Revolution, to the people of the United States has always been an anomalous one and of a complex character.

Following the policy of the European governments in the discovery of America towards the Indians who were found here, the colonies before the Revolution and the States and the United States since, have recognized in the Indains a possessory right to the soil over which they roamed and

hunted and established occasional villages. But they asserted an ultimate title in the land itself, by which the Indian tribes were forbidden to sell or transfer it to other nations or peoples without the consent of this paramount authority. When a tribe wished to dispose of its land, or any part of it, or the State or the United States wished to purchase it, a treaty with the tribe was the only mode in which this could be done. The United States recognized no right in private persons, or in other nations, to make such a purchase by treaty or otherwise. With the Indians themselves these relations are equally difficult to define. They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.

Perhaps the best statement of their position is found in the two opinions of this court by Chief Justice Marshall in the case of the *Cherokee Nation* v. *Georgia*, 5 Pet. 1, and in the case of *Worcester* v. *State of Georgia*, 6 Pet. 515, 536. These opinions are exhaustive; and in the separate opinion of Mr. Justice Baldwin, in the former, is a very valuable resume of the treaties and statutes concerning the Indian tribes previous to and during the confederation.

In the first of the above cases it was held that these tribes were neither States nor nations, had only some of the attributes of sovereignty, and could not be so far recognized in that capacity as to sustain a suit in the Supreme Court of the United States. In the second case it was said that they were not subject to the jurisdiction asserted over them by the State of Georgia, which, because they were within its limits, where they had been for ages, had attempted to extend her laws and the jurisdiction of her courts over them.

In the opinions in these cases they are spoken of as "wards of the nation," "pupils," as local dependent communities. In this spirit the United States has conducted its relations to them from its organization to this time. But, after an experience of a hundred years of the treaty-making system of government, Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in §2079 of the Revised Statutes:

"No Indian nation or tribe, within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy one, shall be hereby invalidated or impaired."

The case of *Crow Dog*, 109 U. S. 556, in which an agreement with the Sioux Indians, ratified by an act of Congress, was supposed to extend over them the laws of the United States and the jurisdiction of its courts, covering murder and other grave crimes, shows the purpose of Congress in this new departure. The decision in that case admits that if the intention of Congress had been to punish, by the United States courts, the murder of one Indian by another, the law would have been valid. But the court could not see, in the agreement with the Indians sanctioned by

Congress, a purpose to repeal § 2146 of the Revised Statutes, which expressly excludes from that jurisdiction the case of a crime committed by one Indian against another in the Indian country. The passage of the act now under consideration was designed to remove that objection, and to go further by including such crimes on reservations lying within a State.

Is this latter fact a fatal objection to the law? The statute itself contains no express limitations upon the powers of a State or the jurisdiction of its courts. If there be any limitation in either of these, it grows out of the implication arising from the fact that Congress has defined a crime committed within the State, and made it punishable in the courts of the United States. But Congress *has* done this, and *can* do it, with regard to all offences relating to matters to which the Federal authority extends. Does that authority extend to this case?

It will be seen at once that the nature of the offence (murder) is one which in almost all cases of its commission is punishable by the laws of the States, and within the jurisdiction of their courts. The distinction is claimed to be that the offence under the statute is committed by an Indian, that it is committed on a reservation set apart within the State for residence of the tribe of Indians by the United States, and the fair inference is that the offending Indian shall belong to that or some other tribe. It does not interfere with the process of the State courts within the reservation, nor with the operation of State laws upon white people found there. Its effect is confined to the acts of an Indian of some tribe, of a criminal character, committed within the limits of the reservation.

It seems to us that this is within the competency of Congress. These Indian tribes *are* the wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.

In the case of *Worcester* v. *The State of Georgia*, above cited, it was held that, though the Indians had by treaty sold their land within that State, and agreed to move away, which they had failed to do, the State could not, while they remained on those lands, extend its laws, criminal and civil, over the tribes; that the duty and power to compel their removal was in the United States, and the tribe was under their protection, and could not be subjected to the laws of the State and the process of its courts.

The same thing was decided in the case of *Fellows* v. *Blacksmith & Others*, 19 How. 366. In this case, also, the Indians had sold their lands under supervision of the State of Massachusetts and of New York, and had agreed to remove within a given time. When the time came a suit to recover some of the land was brought in the Supreme Court of New York, which gave judgment for the plaintiff. But this court held, on

writ of error, that the State could not enforce this removal, but the duty and power to do so was in the United States. See also the case of the *Kansas Indians*, 5 Wall. 737; *New York Indians*, 5 Wall. 761.

The power of the General Government over those remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theatre of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

We answer the questions propounded to us, that the 9th section of the act of March, 1885, is a valid law in both its branches, and that the Circuit Court of the United States for the District of California has jurisdiction of the offence charged in the indictment in this case.

UNITED STATES *v.* RICKERT.

Opinion of the Court.—Decided February 23, 1903.

Mr. A. B. Kittredge and *Mr. W. D. Lane* for appellee.

Mr. Justice Harlan delivered the opinion of the court.

I. *Were the lands held by the allottees, Charles B. Crawford and the other Indians named in the bill, subject to assessment and taxation by the taxing authorities of Roberts County, South Dakota?*

This is the first of the questions certified by the judges of the Circuit Court of Appeals. It is not, in our opinion, difficult in solution.

By the act of Congress of February 8, 1887, c. 119, referred to in the certificate and known as the General Allotment Act, provision was made for the allotment on lands in severalty to Indians on the various reservations, and for extending the protection of the laws of the United States and the Territories over the Indians. To that end the President was authorized, whenever, in his opinion, a reservation or any part thereof was advantageous for agricultural and grazing purposes, to cause it, or any part thereof, to be surveyed or resurveyed if necessary, and to allot the lands in the reservation in severalty to any Indian located thereon in certain quantities specified in the statute—the allotments to be made by special agents appointed for that purpose, and by the agents in charge of the special reservations on which the allotments were made. 24 Stat. 388, 389–90, § 1.

What interest, if any, did the Indian allottee acquire in the land allotted to him? That question is answered by the fifth section of the allotment act, which provides: "That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by

patent to said Indian, or his heirs as aforesaid, in fee, discharge of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; . . . " 24 Stat. 389, § 5

The word "patents," where it is first used in this section, was not happily chosen to express the thought which, it is clear, all parts of the section being considered, Congress intended to express. The "patents" here referred to (although that word has various meanings) were, as the statute plainly imports, nothing more than instruments or memoranda in writing, designed to show that for a period of twenty-five years the United States would hold the land allotted, in trust for the sole use and benefit of the allottee, or, in case of his death, of his heirs, and subsequently, at the expiration of that period—unless the time was extended by the President—convey the fee, discharged of the trust and free of all charge or incumbrance. In other words, the United States retained the legal title, giving the Indian allottee a paper or writing, improperly called a patent, showing at a particular time in the future, unless it was extended by the President, he would be entitled to a regular patent conveying the fee. This interpretation of the statute is in harmony with the explicit declaration that any conveyance of the land, or any contract touching the same, while the United States held the title in trust, should be absolutely null and void. So that the United States retained its hold on the land allotted for the period of twenty-five years after the allotment, and as much longer as the President, in his discretion, should determine.

The bill, as appears from the certificate of the judges, shows that the lands in question were allotted "under provisions of the agreement of December 12, 1889, as ratified by the act of March 3, 1891, and more particularly under Section V of the General Allotment Act approved February 8, 1887." Upon inspection of that agreement we find nothing that indicates any different relation of the United States to the allotted lands from that created or recognized by the act of 1887. On the contrary the agreement contemplates that patents shall issue for the lands allotted under it "upon the same terms and conditions and limitations as provided in section five of the act of Congress approved February 8, 1887." 26 Stat. 1035, 1036, art. IV.

If, as is undoubtedly the case, these lands are held by the United States in execution of its plans relating to the Indians—without any right in the Indians to make contracts in reference to them or to do more than to occupy and cultivate them—until a regular patent conveying the fee was issued to the State of South Dakota, for state or municipal purposes, to assesss and tax the land in question until at least the fee was conveyed to the Indians. These Indians are yet wards of the Nation, in a condition of pupilage or dependency, and have not been discharged from that condition. They occupy these lands with the consent and authority of

the United States under the act of 1887, and the agreement of 1889, ratified by the act of 1891, is part of the national policy by which the Indians are to be maintained as well as prepared for assuming the habits of civilized life, and ultimately the privileges of citizenship. To tax these lands is to tax an instrumentality employed by the United States for the benefit and control of this dependent race, and to accomplish beneficent objects with reference to a race of which this court has said that "from their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen." *United States* v. *Kagama*, 118 U. S. 375, 384. So that if they may be taxed, then the obligations which the Government has assumed in referrence to these Indians may be entirely defeated; for by the act of 1887 the Government has agreed at a named time to convey the land to the allottee in fee, discharged of the trust, "and free of all charge or incumbrances whatsoever." To say that these lands may be assessed and taxed by the county of Roberts under the authority of the State, is to say they may be sold for the taxes, and thus become so burdened that the United States could not discharge its obligations to the Indians without itself paying the taxes imposed from year to year, and thereby keeping the lands free from incumbrances.

In *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151, 155, the court held that property of the United States was exempt by the Constitution of the United States from taxation under the authority of any State. Giving the outlines of the grounds of the judgment delivered by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, the court said: "That Constitution and the laws made in pursuance thereof are supreme; they control the constitutions and laws of the respective States, and cannot be controlled by them. The people of a State give to their government a right of taxing themselves and their property at its discretion. But the means employed by the Government of the Union are not given by the people of a particular State, but by the people of all the States; and being given by all, for the benefit of all, should be subjected to that Government only which belongs to all. All subjects over which the sovereign power of a State extends are subjects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does not extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States. The attempt to use the taxing power of a State on the means employed by the Government of the Union, in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State cannot give. The power to tax involves the power to destroy; the power to destroy may defeat and render useless the power to create; and there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control. The States have no power

by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government."

These principles were recognized and applied in *Wisconsin Railroad Co.* v. *Price County*, 133 U. S. 496, 504, in which the court said: "The Constitution vests in Congress the power to 'dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' And this implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise."

It was therefore well said by the Attorney General of the United States, in an opinion delivered in 1888, "that the allotment lands provided for in the act of 1887 are exempt from state or territorial taxation upon the ground above stated, . . . namely, that the lands covered by the act are held by the United States for the period of twenty-five years in trust for the Indians, such trust being an agency for the exercise of a Federal power, and therefore outside the province of state or territorial authority." 19 Op. Atty. Gen. 161, 169.

In support of these general views reference may be made to the following cases: *Weston* v. *City of Charleston*, 2 Pet. 467; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *Bank of the United States*, 9 Wheat. 738; *United States* v. *Rogers*, 4 How. 567; *New York Indians*, 5 Wall. 761; *Choctaw Nation* v. *United States*, 119 U. S. 1, 27; *Stephens* v. *Cherokee Nation*, 174 U. S. 445, 483; *Cherokee Nation* v. *Southern Kansas Railway Co.*, 135 U. S. 641, 653; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294; *Lone Wolf* v. *Hitchcock*, 187 U. S. 553.

Another suggestion by the defendant deserves to be noticed. It is that there is a "compact" between the United States and the State of South Dakota which, if regarded, determines this case for the State. Let us see what there is of substance in this view.

By the act of February 22, 1889, c. 180, providing among other things for the division of the Territory of Dakota into two States, it was declared that the conventions called to frame constitutions for them should provide, "by ordinances irrevocable without the consent of the United States and the people of said States," as follows:

"Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; . . . that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinance herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any

act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such act of Congress may prescribe." 25 Stat. 677.

That provision was embodied in the constitution of South Dakota—for the purpose no doubt of meeting the views of Congress expressed in the Enabling Act of 1889—and was declared by that instrument to be irrevocable without the consent of the United States and the people of the State expressed by their legislative assembly; and this action of the United States and of the State constitutes the "compact" referred to, and upon which the appellee relies in support of the taxation in question.

We pass by, as unnecessary to be considered, whether the above provision in the act of Congress of 1889 had any legal efficacy in itself, after the admission of South Dakota into the Union upon an equal footing with the other States; for the same provision, in the state constitution, deliberately adopted by the State, is, without reference to the act of Congress, the law for its legislature and people, until abrogated by the State. Looking at that provision, we find nothing in it sustaining the contention that the county of Roberts has any authority to tax these lands. On the contrary, it is declared in the state constitution that lands within the limits of the State, owned or held by any Indian or Indian tribe, shall, until the title has been extinguished by the United States, remain under the absolute jurisdiction and control of the Congress of the United States. And when the State comes to declare, in its constitution, what taxes it shall not be precluded from imposing, the provision is that it shall not be precluded from taxing, as other lands, "any lands owned or held by any Indian who has severed his tribal relations, *and* has obtained from the United States, or from any person, a title thereto *by patent or other grant.*" Art. XXII. The patent or grant here referred to is the final patent or grant which invests the patentee or grantee with the title in fee, that is, with absolute ownership. No such patent or grant has been issued to these Indians. So that the appellee cannot sustain the taxation in question under the clause of the state constitution to which he refers, and the right to tax these lands must rest upon the general authority of the legislature to impose taxes. But, as already said, no authority exists for the State to tax lands which are held in trust by the United States for the purpose of carrying out its policy in reference to these Indians.

II. *Were the improvements, such as houses and other structures upon the lands held by allotment by Charles R. Crawford and the other Indians named in the bill, subject to assessment and taxation by the taxing officers of Roberts County as personal property in* 1899 *and* 1900? This is the second of the questions certified by the judges of the Circuit Court of Appeals.

Looking at the object to be accomplished by allotting Indian lands in severalty, it is evident that Congress expected that the lands so allotted would be improved and cultivated by the allottee. But that object would be defeated if the improvements could be assessed and sold for taxes. The improvements to which the question refers were of a permanent kind. While the title to the land remained in the United States, the permanent improvements could no more be sold for local taxes than could the land to which they belonged. Every reason that can be urged

to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements.

It is true that the statutes of South Dakots, for the purposes of taxation, classify "all improvements made by persons upon lands held by them under the laws of the United States" as personal property. But that classification cannot apply to permanent improvements upon lands allotted to and occupied by Indians, the title to which remains with the United States, the occupants still being wards of the Nation, and as such under its complete authority and protection. The fact remains that the improvements here in question are essentially a part of the lands, and their use by the Indians is necessary to effectuate the policy of the United States.

Counsel for the appellee suggests that the only interest of the United States is to be able at the end of twenty-five years from the date of allotment to convey the *land* free from any charge or encumbrance; that if a house upon Indian land were seized and sold for taxes, that would not prevent the United States from conveying the *land* free from any charge or incumberance; and that, in such case, the Indian could not claim any breach of contract on the part of the United States. These suggestions entirely ignore the relation existing between the United States and the Indians. It is not a relation simply of contract, each party to which is capable of guarding his own interests, but the Indians are in a state of dependency and pupilage, entitled to the care and protection of the Government. When they shall be let out of that state is for the United States to determine without interference by the courts or by any State. The Government would not adequately discharge its duty to these people if it placed its engagements with them upon the basis merely of contract and failed to exercise any power it possessed to protect them in the possession of such improvements and personal property as were necessary to the enjoyment of the land held in trust for them. In *Choctaw Nation* v. *United States*, 119 U. S. 1, 28, this court said: "The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons, equally subject to the same laws." See also *Minnesota* v. *Hitchcock*, 185 U. S. 373, 396.

III. *Was the personal property, consisting of cattle, horses, and other property of like character, which had been issued to these Indians by the United States, and which they were using upon their allotments, liable to assessments and taxation by the officers of Roberts County in* 1889 *and* 1900? This is the third one of the certified questions.

The answer to this question is indicated by what has been said in reference to the assessment thereon. The personal property in question

was purchased with the money of the Government and was furnished to the Indians in order to maintain them on the land allotted during the period of the trust estate, and to induce them to adopt the habits of civilized life. It was, in fact, the property of the United States, and was put into the hands of the Indians to be used in execution of the purpose of the Government in reference to them. The assessment and taxation of the personal property would necessarily have the effect to defeat that purpose.

IV. *Has the United States such an interest in this controversy or in its subjects as entitles it to maintain this suit?* This is the fourth one of the certified questions.

In view of the relation of the United States to the real and personal property in question, as well as to these dependent Indians still under national control, and in view of the injurious effect of the assessment and taxation complained of upon the plans of the Government with reference to the Indians, it is clear that the United States is entitled to maintain this suit. No argument to establish that proposition is necessary.

V. *Has the United States a remedy at law so prompt and efficacious that it is deprived of all relief in equity?* This is the last of the certified questions.

We do not perceive that the Government has any remedy at law that could be at all efficacious for the protection of its rights in the property in question and for the attainment of its purposes in reference to these Indians. If the personal property and the structures on the land were sold for taxes and possession taken by the purchaser, then the Indians could not be maintained on the allotted lands and the Government, unless it abandoned its policy to maintain these Indians on the allotted lands would be compelled to appropriate more money and apply it in the erection of other necessary structures on the land and in the purchase of other stock required for purpose of cultivation. And so on, every year. It is manifest that no proceeding at law can be prompt and efficacious for the protection of the rights of the Government, and that adequate relief can only be had in a court of equity, which, by a comprehensive decree, can finally determine once for all the question of the validity of the assessment and taxation in question, and thus give security against any action upon the part of the local authorities tending to interfere with the complete control, not only of the Indians by the Government, but of the property supplied by them to the Government and in use on the allotted lands. *Railway Co.* v. *McShane*, 22 Wall. 444; *Coosaw Mining Co.* v. *South Carolina*, 144 U. S. 550, 564–66.

Some observations may be made that are applicable to the whole case. It is said that the State has conferred upon these Indians the right of suffrage and other rights that ordinarily belong only to citizens, and that they ought, therefore, to share the burdens of government like other people who enjoy such rights. These are considerations to be addressed to Congress. It is for the legislative branch of the Government to say when these Indians shall cease to be dependent and assume the responsibilities attaching to citizenship. That is a political question, which the courts may not determine. We can only deal with the case as it exists under the legislation of Congress.

We answer the fourth question in the affirmative, and the first, second,

third and fifth questions in the negative. It will be so certified to the Circuit Court of Appeals.

Answers certified.

Mr. Justice Brewer took no part in the decision of this case.

UNITED STATES *v.* CROOK.

DUNDY, J.—During the fifteen years in which I have been engaged in administering the laws of my country, I have never been called upon to hear or decide a case that appealed so strongly to my smypathy as the one now under consideration. On the one side, we have a few of the remnants of a once numerous and powerful, but now weak, insignificant, unlettered, and generally despised race; on the other we have the representatives of one of the most powerful, most enlightened, and most christianized nations of modern times. On the one side, we have the representatives of this wasted race coming into this national tribunal of ours, asking for justice and liberty to enable them to adopt our boasted civilization, and to persue the arts of peace, which have made us great and happy as a nation; on the other side, we have this magnificent, if not magnanimous, government, resisting this application with the determination of sending these people back to the country which is to them less desirable than perpetual imprisonment in their own native land. But I think it is creditable to the heart and mind of the brave and distinguished officer who is made respondent herein to say that he has no sort of sympathy in the business in which he is forced by his position to bear a part so conspicuous; and, so far as I am individually concerned, I think it not improper to say that, if the strongest possible sympathy could give the relators title to freedom, they would have been restored to liberty the moment the arguments in their behalf were closed. No examination or further thought would then have been necessary or expedient. But in a country where liberty is regulated by law, something more satisfactory and enduring than mere sympathy must furnish and constitute the rule and basis of judicial action. It follows that this case must be examined and decided on principles of law, and that unless the relators are entitled to their discharge under the constitution or laws of the United States, or some treaty made pursuant thereto, they must be remanded to the custody of the officer who caused their arrest, to be returned to the Indian Territory, which they left without the consent of the government.

On the 8th of April, 1879, the relators, Standing Bear and twenty-five others, during the session of the court held at that time at Lincoln, presented their petition, duly verified, praying for the allowance of a writ of *habeas corpus* and their final discharge from custody thereunder.

The petition alleges, in substance, that the relators are Indians who have formerly belonged to the Ponca tribe of Indians, now located in the Indian Territory; that they had some time previously withdrawn from the tribe, and completely served their tribal relations therewith, and had adopted the general habits of the whites, and were then endeavor-

ing to maintain themselves by their own exertions, and without aid or assistance from the general government; that whilst they were thus engaged without being guilty of violating any of the laws of the United States, they were arrested and restrained of their liberty by order of the respondent, George Crook.

On the 18th of April the writ was returned, and the authority for the arrest and detention is therein shown. The substance of the return to the writ, and the additional statement since filed, is that the relators are individual members of, and connected with, the Ponca tribe of Indians; that they had fled or escaped from a reservation situated some place within the limits of the Indian Territory—had departed therefrom without permission from the government; and, at the request of the secretary of the interior, the general of the army had issued an order which required the respondent to arrest and return the relators to their tribe in the Indian Territory, and that, persuant to the said order, he had caused the relators to be arrested on the Omaha Indian reservation, and that they were in his custody for the purpose of being returned to the Indian Territory.

It is claimed upon the one side, and denied upon the other, that the relators had withdrawn and severed, for all time, their connection with the tribe to which they belonged; and upon this point alone was there any testimony produced by either party hereto. The other matters stated in the petition and the return to the writ are conceded to be true; so that the questions to be determined are purely questions of law.

On the 8th of March, 1859, a treaty was made by the United States with the Ponca tribe of Indians, by which a certain tract of country, north of the Niobrara river and west of the Missouri, was set apart for the permanent home of the said Indians, in which the government agreed to protect them during their good behavior. But just when, or how, or why, or under what circumstances, the Indians left their reservation in Dakota and went to the Indian Territory, does not appear.

The district attorney very earnestly questions the jurisdiction of the court to issue the writ, and to hear and determine the case made herein, and has supported his theory with an argument of great ingenuity and much ability. But, nevertheless, I, am of the opinion that his premises are erroneous, and his conclusions, therefore, wrong and unjust. The great respect I entertain for the officer, and the very able manner in which his views were presented, make it necessary for me to give somewhat at length the reasons which lead me to this conclusion.

The district attorney discussed at length the reasons which led to the origin of the writ of *habeas corpus*, and the character of the proceedings and practice in connection therewith in the parent country. It was claimed that the laws of the realm limited the right to sue out this writ to the *free subjects* of the kingdom, and that none other came within the benefits of such beneficent laws; and, reasoning from analogy, it is claimed that none but American citizens are entitled to sue out this high prerogative writ in any of the federal courts. I have not examined the English laws regulating the sueing out of the writ, nor have I thought it necessary to do so. Of this I will only observe that if the laws of England are as they are claimed to be, they will appear at a disadvantage when compared with our own. This only proves that the laws of a

limited monarchy are sometimes less wise and humane than the laws of our own republic—that whilst the parliament of Great Britain was legislating in behalf of the favored few, the congress of the United States was legislating in behalf of all mankind who come within our jurisdiction.

Section 751 of the revised statutes declares that "the supreme court and the circuit and district courts shall have power to issue writs of *habeas corpus*." Section 752 confers the power to issue writs on the judges of said courts, within their jurisdiction, and declares this to be "for the purpose of inquiry into the cause of restraint of liberty." Section 753 restricts the power, limits the jurisdiction, and defines the cases where the writs may properly issue. That may be done under this section where the prisoner "is in custody under or by color of authority of the United States, * * * or is in custody for an act done or omitted in pursuance of a law of the United States, * * * or in custody in violation of the constitution or of a law or treaty of the United States." Thus, it will be seen that when a *person* is in custody or deprived of his liberty under color of authority of the United States, or in violation of the constitution or laws or treaties of the United States, the federal judges have jurisdiction, and the writ can properly issue. I take it that the true construction to be placed upon this act is this, that in *all* cases where federal officers, civil or military, have the custody or control of a person claimed to be unlawfully restrained of liberty, they are *then* restrained of liberty under color of authority of the United States, and the federal courts can properly proceed to determine the question of unlawful restraint, because no other courts can properly do so. In the other instance, the federal courts and judges can properly issue the writ in *all* cases where the *person* is alleged to be in custody in violation of the constitution or a law or treaty of the United States. In such a case, it is wholly immaterial what *officer*, state or federal, has custody of the person seeking the relief. These relations may be entitled to the writ in either case. Under the first paragraph they certainly are—that is, if an Indian can be entitled to it at all—because they are in custody of a federal officer, under color of authority of the United States. And they may be entitled to the writ under the other paragraph, before recited, for the reason, as they allege, that they are restrained of liberty in violation of a provision of their treaty, before referred to. Now it must be borne in mind that the *habeas corpus* act describes applicants for the writ as "*persons*," or "*parties*," who may be entitled thereto. It nowhere describes them as *citizens*, nor is citizenship in any way or place made a qualification for suing out the writ, and, in the absence of express provision or necessary implication which would require the interpretation contended for by the district attorney, I should not feel justified in giving the words *person* and *party* such a narrow construction. The most natural, and therefore most reasonable, way is to attach the same meaning to *words* and *phrases* when found in a statute that is attached to them when and where found in general use. If we do so in this instance, then the question cannot be open to serious doubt. Webster describes a person as "a living soul; a self-conscious being; a moral agent; especially a living human being; a man, woman, or child; an individual of the human race." This is comprehensive enough, it would seem, to include even an Indian. In defining certain generic terms, the 1st section of the

revised statutes declares that the word *person* includes copartnerships and corporations. On the whole, it seems to me quite evident that the comprehensive language used in this section is intended to apply to all mankind—as well the relators as the more favored white race. This will be doing no violence to language, or to the spirit or letter of the law, nor to the intentions, as it is believed, of the law-making power of the government. I must hold, then, that *Indians*, and consequently the relators, are *persons*, such as are described by and included within the laws before quoted. It is said, however, that this is the first instance or record in which an Indian has been permitted to sue out and maintain a writ of *habeas corpus* in a federal court, and therefore the court must be within jurisdiction in the premises. This is a *non sequitur*. I confess I do not know of another instance where this has been done, but I can also say that the occasion for it perhaps has never before been so great. It may be that the Indians think it wiser and better, in the end, to resort to this peaceful process than it would be to undertake the hopeless task of redressing their own alleged wrongs by force of arms. Returning reason, and the sad experience of other similarly situated, have taught them the folly and madness of the arbitrament of the sword. They can readily see that any serious resistance on their part would be the signal for their utter extermination. Have they not, then, chosen the wiser part by restoring to the very tribunal erected by those they claim have wronged and oppressed them? This, however, is not the tribunal of their own choice, but it is the *only* one into which they can lawfully go for deliverance. It cannot, therefore, be fairly said that because no Indian ever before invoked the aid of this writ in a federal court, the rightful authority to issue it does not exist. Power and authority rightfully conferred do not necessarily cease to exist in consequence of long non-user. Though much time has elasped, and many generations have passed away, since the passage of the original *habeas corpus* act, from which I have quoted, it will not do to say that these Indians cannot avail themselves of its beneficient provisions simply because none of their ancestors ever sought relief thereunder.

Every *person* who comes within our jurisdiction, whether he be European, Asiatic, African, or "native to the manor born," must obey the laws of the United States. Every one who violates them incurs the penalty provided thereby. When a *person* is charged, in a proper way, with the commission of crime, we do not inquire upon the trial in what country the accused was born, nor to what sovereign or government allegiance is due, nor to what race he belongs. The question of guilt and innocence only form the subjects of inquiry. An Indian, then, especially off from his reservation, is amendable to the criminal laws of the United States, the same as all other persons. They being subject to arrest for the violation of our criminal laws, and being *persons* such as the law contemplates and includes in the description of parties who may sue out the writ, it would indeed be a sad commentary on the justice and impartiality of our laws to hold that Indians, though natives of our own country, cannot test the validity of an alleged illegal imprisonment in this manner, as well as a subject of a foreign government who may happen to be sojourning in this country, but owing it no sort of allegiance. I cannot doubt that congress intended to give to *every person* who might be

unlawfully restrained of liberty under color of authority of the United States, the right to the writ and a discharge thereon. I conclude, then, that, so far as the issuing of the writ is concerned, it was properly issued, and that the relators are within the jurisdiction conferred by the *habeas corpus* act.

A question of much greater importance remains for consideration, which, when determined, will be decisive of this whole controversy. This relates to the right of the government to arrest and hold the relators for a time, for the purpose of being returned to a point in the Indian Territory from which it is alleged the Indians escaped. I am not vain enough to think that I can do full justice to a question like the one under consideration. But, as the matter furnishes so much valuable material for discussion, and so much food for reflection, I shall try to present it as viewed from my own standpoint, without reference to consequence or criticisms, which, though not specially invited, will be sure to follow.

A review of the policy of the government adopted in its dealings with the friendly tribe of Poncas, to which the relators at one time belonged, seems not only appropriate, but almost indispensable to a correct understanding of this controversy. The Ponca Indians have been at peace with the government, and have remained the steadfast friends of the whites, for many years. They lived peaceably upon the land and in the country they claimed and called their own.

On the 12th of March, 1858, they made a treaty with the United States, by which they ceded all claims to lands, except the following tract: "Beginning at a point on the Niobrara river, and running due north so as to intersect the Ponca river twenty-five miles from its mouth; thence from said point of intersection up and along the Ponca river twenty miles; thence due south to the Niobrara river; and thence down and along said river to the place of beginning; which tract is hereby reserved for the future homes of said Indians." In consideration of this cession, the government agreed "to protect the Poncas in the possession of the tract of land reserved for their future homes, and their persons and property thereon, during good behavior on their part." Annuities were to be paid them for thirty years, houses were to be built, schools were to be established, and other things were to be done by the government, in consideration of said cession. (See 12 Stats. at Large, p. 997.)

On the 10th of March, 1865, another treaty was made, and a part of the other reservation was ceded to the government. Other lands, however, were, to some extent, substituted therefor, "by way of rewarding them for their constant fidelity to the government, and citizens thereof, and with a view of returning to the said tribe of Ponca Indians their old burying-grounds and cornfields." This treaty also provided for paying $15,080 for spoliation committed on the Indians. (See 14 Stats. at Large, p. 675.)

On the 29th day of April, 1868, the government made a treaty with the several bands of Sioux Indians, which treaty was ratified by the senate on the 16th of the following February, in and by which the reservations set apart for the Poncas under former treaties were completely absolved. (15 Stats. at Large, p. 635.) This was done without consultation with, or knowledge or consent on the part of, the Ponca tribe of Indians.

On the 15th of August, 1876, Congress passed the general Indian appropriation bill, and in it we find a provision authorizing the secretary of the interior to use $25,000 for the removal of the Poncas to the Indian Territory, and providing them a home therein, with consent of the tribe. (19 Stats. at Large, p. 192.)

In the Indian appropriation bill passed by congress on the 27th day of May, 1878, we find a provision authorizing the secretary of the interior to expend the sum of $30,000 for the purpose of removing and locating the Ponca Indians on a new reservation, near the Kaw river.

No reference has been made to any other treaties or laws, under which the right to arrest and remove the Indians is claimed to exist.

The Poncas lived upon their reservation in southern Dakota, and cultivated a portion of the same, until two or three years ago, when they removed therefrom, but whether by force or otherwise does not appear. At all events, we find a portion of them, including the relators, located at some point in the Indian Territory. *There*, the testimony seems to show, is where the trouble commenced. Standing Bear, the principal witness, states that out of five hundred and eighty-one Indians who went from the reservation in Dakota to the Indian Territory, one hundred and fifty-eight died within a year or so, and a great proportion of the others were sick and disabled, caused, in a great measure, no doubt, from change of climate; and to save himself and the survivors of his wasted family, and the feeble remnant of his little band of followers, he determined to leave the Indian Territory and return to his old home, where, to use his own language, "he might live and die in peace, and be buried with his fathers." He also states that he informed the agent of their final purpose to leave, never to return, and that he and his followers had finally, fully, and forever severed his and their connection with the Ponca tribe of Indians, and had resolved to disband as a tribe, or band, of Indians, and to cut loose from the government, go to work, become self-sustaining, and adopt the habits and customs of a higher civilization. To accomplish what would seem to be a desirable and laudable purpose, all who were able so to do went to work to earn a living. The Omaha Indians, who speak the same language, and with whom many of the Poncas have long continued to intermarry, gave them employment and ground to cultivate, so as to make them self-sustaining. And it was when at the Omaha reservation, and when *thus* employed, that they were arrested by order of the government, for the purpose of being taken back to the Indian Territory. They claim to be unable to see the justice, or reason, or wisdom, or *necessity*, of removing them by force from their own native plains and blood relations to a far-off country, in which they can see little but new-made graves opening for their reception. The land from which they fled in fear has no attractions for them. The love of home and native land was strong enough in the minds of these people to induce them to brave every peril to return and live and die where they had been reared. The bones of the dead son of Standing Bear were not to repose in the land they hoped to be leaving forever, but were carefully preserved and protected, and formed a part of what was to them a melancholy procession homeward. Such instances of parental affection, and such love of home and native land, may be *heathen* in origin, but it seems to me that they are not unlike *christian* in principle.

What is here stated in this connection is mainly for the purpose of showing that the relators did all they could to separate themselves from their tribe and to sever their tribal relations, for the purpose of becoming self-sustaining and living without support from the government. This being so, it presents the question as to whether or not an Indian can withdraw from his tribe, sever his tribal relation therewith, and terminate his allegiance thereto, for the purpose of making an independent living and adopting our own civilization.

If Indian tribes are to be regarded and treated as separate but dependent nations, there can be no serious difficulty about the question. If they are not to be regarded and treated as separate, dependent nations, then no allegiance is owing from an individual Indian to his tribe, and he could, therefore, withdraw therefrom at any time. The question of expatriation has engaged the attention of our government from the time of its foundation. Many heated discussions have been carried on between our own and foreign governments on this great question, until diplomacy has triumphantly secured the right to every person found within our jurisdiction. This right has always been claimed and admitted by our government, and it is now no longer an open question. It can make but little difference, then, whether we accord to the Indian tribes a national character or not, as in either case I think the individual Indian possesses the clear and God-given right to withdraw from his tribe and forever live away from it, as though it had no further existence. If the right of expatriation was open to doubt in this country down to the year 1868, certainly since that time no sort of question as to the right can now exist. On the 27th of July of that year congress passed an act, now appearing as section 1999 of the revised statutes, which declares that: "Whereas, the right of expatriation is a natural and inherent right of all the people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and, whereas, in the recognition of this principle the government has freely received emigrants from all nations, and invested them with the rights of citizenship. * * * Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic."

This declaration must forever settle the question until it is reopened by other legislation upon the same subject. This is, however, only reaffirming in the most solemn and authoritative manner a principle well settled and understood in this country for many years past.

In most, if not all, instances in which treaties have been made with the several Indian tribes, where reservations have been set apart for their occupancy, the government has either reserved the right or bound itself to protect the Indians thereon. Many of the treaties expressly prohibit white persons being on the reservations unless specially authorized by the treaties or acts of congress for the purpose of carrying out treaty stipulations.

Laws passed for the government of the Indian country, and for the purpose of regulating trade and intercourse with the Indian tribes, confer upon certain officers of the government almost unlimited power over the persons who go upon the reservations without lawful authority. Section 2149 of the revised statutes authorizes and requires the commissioner of

Indian affairs, with the approval of the secretary of the interior, to remove from any "tribal reservation" any person being thereon without authority of law, or whose presence within the limits of the reservation may, in the judgment of the commissioner, be detrimental to the peace and welfare of the Indians. The authority here conferred upon the commissioner fully justifies him in causing to be removed from Indian reservations *all* persons thereon in violation of law, or whose presence thereon may be detrimental to the peace and welfare of the Indians upon the reservations. This applies as well to an Indian as to a white person, and manifestly for the same reason, the object of the law being to prevent unwarranted interference between the Indians and the agent representing the government. Whether such an extensive discretionary power is wisely vested in the commissioner of Indian affairs or not, need not be questioned. It is enough to know that the power rightfully exists, and, where existing, the exercise of the power must be upheld. If, then, the commissioner has the right to cause the expulsion from the Omaha Indian reservation of all persons thereon who are there in violation of law, or whose presence may be detrimental to the peace and welfare of the Indians, then he must of necessity be authorized to use the necessary force to accomplish his purpose. Where, then, is he to look for this necessary force? The military arm of the government is the most natural and most potent force to be used on such occasions, and section 2150 of the revised statutes specially authorizes the use of the army for this service. The army, then, it seems, is the proper force to employ when intruders and trespassers who go upon the reservations are to be ejected therefrom.

The first subdivision of the revised statutes last referred to provides that "the military forces of the United States may be employed, in such manner and under such regulations as the president may direct, in the apprehension of every person who may be in the Indian country in violation of law, and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the territory of judicial district in which such person shall be found, to be proceeded against in due course of law." * * * This is the authority under which the military can be lawfully employed to remove intruders from an Indian reservation. What may be done by the troops in such case is here fully and clearly stated; and it is *this* authority, it is believed, under which the respondent acted.

All Indian reservations held under treaty stipulations with the government must be deemed and taken to be a part of the *Indian country*, within the meaning of our laws on that subject. The relators were found upon the Omaha Indian reservation. That being a part of the Indian country, and they not being a part of the Omaha tribe of Indians, they were there without lawful authority, and if the commissioner of Indian affairs deemed their presence detrimental to the peace and welfare of the Omaha Indians, he had lawful warrant to remove them from the reservation, and to employ the necessary military force to effect this object in safety.

General Crook had the rightful authority to remove the relators from the reservation, and must stand justified in removing them therefrom. But when the troops are thus employed they must exercise the authority in the *manner* provided in the section of the law just read. This law

makes it the duty of the troops to convey the parties arrested, by the nearest convenient and safe route, *to the civil authority of the territory or judicial district in which such persons shall be found, to be proceeded against in due course of law.* The *duty* of the military authorities is here very clearly and sharply defined, and no one can be justified in departing therefrom, especially in time of peace. As General Crook had the right to arrest and remove the relators from the Omaha Indian reservation, it follows, from what has been stated, that the law required him to convey them to this city and turn them over to the marshal and United States attorney, to be proceeded against in due course of law. Then proceedings could be instituted against them in either the circuit or district court, and if the relators had incurred a penalty under the law, punishment would follow, otherwise; they would be discharged from custody. But this course was not pursued in this case; neither was it intended to observe the laws in that regard, for General Crook's orders, enamating from higher authority, expressly required him to apprehend the relators and remove them by force to the Indian Territory, from which it is alleged they escaped. But in what General Crook has done in the premises no fault can be imputed to him. He was simply obeying the orders of his superior officers, but the orders, as we think, lack the necessary authority of law, and are, therefore, not binding on the relators.

I have searched in vain for the semblance of any authority justifying the commissioner in attempting to remove by force any Indians, whether belonging to a tribe or not, to any place, or for any other purpose than what has been stated. Certainly, without some specific authority found in an act of congress, or in a treaty with the Ponca tribe of Indians, he could not lawfully force the relators back to the Indian Territory, to remain and die in that country, against their will. In the absence of all treaty stipulations or laws of the United States authorizing such removal, I must conclude that no such arbitrary authority exists. It is true, if the relators are to be regarded as a part of the great nation of Ponca Indians, the government might, in time of war, remove them to any place of safety so long as the war should last, but perhaps no longer, unless they were charged with the commission of some crime. This is a war power merely, and exists in time of war only. Every nation exercises the right to arrest and detain an alien enemy during the existence of a war, and all subjects or citizens of the hostile nations are subject to be dealt with under this rule.

But it is not claimed that the Ponca tribe of Indians are at war with the United States, so that this war power might be used against them; in fact, they are amongst the most peaceable and friendly of all the Indian tribes, and have at times received from the government unmistakable and substantial recognition of their long-continued friendship for the whites. In time of peace the war power remains in abeyance, and must be subservient to the civil authority of the government until something occurs to justify its exercise. No fact exists, and nothing has occurred, so far as the relators are concerned, to make it necessary or lawful to exercise such an authority over them. If they could be removed to the Indian Territory by force, and kept there in the same way, I can see no good reason why they might not be taken and kept by force in the penitentiary at Lincoln, or Leavenworth, or Jefferson City, or any other place which the

commander of the forces might, in his judgment, see proper to designate. I cannot think that any such arbitrary authority exists in this country.

The reasoning advanced in support of my views, leads me to conclude:

1st. That an *Indian* is a PERSON within the meaning of the laws of the United States, and has, therefore, the right to sue out a writ of *habeas corpus* in a federal court, or before a federal judge, in all cases where he may be confined or in custody under color of authority of the United States, or where he is restrained of liberty in violation of the constitution or laws of the United States.

2d. That General George Crook, the respondent, being commander of the military department of the Platte, has the custody of the relators, under color of authority of the United States, and in violation of the laws thereof.

3d. That no rightful authority exists for removing by force any of the relators to the Indian Territory, as the respondent has been directed to do.

4th. That the Indians possess the inherent right of expatriation, as well as the more fortunate white race, and have the inalienable right to "*life, liberty*, and the pursuit of happiness," so long as they obey the laws and do not trespass on forbidden ground. And,

5th. Being restrained of liberty under color of authority of the United States, and in violation of the laws thereof, the relators must be discharged from custody, and it is so ordered.

Ordered Accordingly.

IN THE SUPREME COURT OF THE UNITED STATES

U. S. v. Thurston County, Nebr.

(Decided March 21, 1906)

SANBORN, Circuit Judge.—This is an appeal from a decree of dismissal upon a demurrer to a bill exhibited by the United States to prevent the county of Thurston in the state of Nebraska from collecting taxes from certain Indians of the Omaha and Winnebago tribes who reside in that county on account of the proceeds of the sales of their inherited lands which have been deposited in a bank by order of the Secretary of the Interior. These Indians are heirs of Indian allottees, whose lands were held in trust by the United States either under Act Aug. 7, 1882, 22 Stat. 342, c. 434, † 6, or under Act Feb. 8, 1887, 24 Stat. 389, c. 119, † 5, which provide that the United States will hold each of their respective allotments "for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs." The allottees died, and their heirs were permitted by the Secretary of the Interior to sell the allotments they inherited under Act May 27, 1902, 32 Stat. 245, 275, c. 888, † 7, on condition that the proceeds of the sales should be deposited to their respective individual credits in a bank selected by the Commissioner of Indian Affairs, subject to their respective checks for not exceeding $10 in any one month, when approved by the Indian agent or officer in charge, and to checks for sums in excess of $10 per month upon the approval of the agent when specifically authorized by the Commissioner of Indian Affairs. The proceeds of these sales on deposit in the bank aggregate more than $36,000. In no instance have the 25 years during which the United States undertook to hold the allotments in trust expired. The officers of the county of Thurston have assessed these deposits for taxation and will levy taxes thereon and collect the same of the Indians who are equitably entitled thereto unless prohibited by order of the court. The Indians to whom these proceeds belong in equity are members of the Omaha and Winnebago tribes, respectively, and these tribes are still under the charge of Indian agents appointed by the United States, which distributes annuities of merchandise, field seeds, farming machinery, and at times stores for subsistence and annuities in money to them, and maintains schools and employs a physician, farmers, teachers, and interpreters for their benefit. The complainant discloses the foregoing facts by its bill, alleges that it brings this suit as trustee for each of these individual heirs and as trustee of the funds derived from the sales of their inherited lands, that it has permitted these sales and caused the deposits of money derived therefrom in the bank, and is controlling the disposition thereof in execution of its trust for the use and benefit of these heirs, and it prays that the county of Thurston and its officers be enjoined from levy-

ing any taxes upon these deposits and from collecting any taxes from these Indians on account of them.

In the consideration of the questions which this bill presents the assumption will be indulged that the Indians for whose benefit the proceeds of these lands are held are citizens of the United States and of the state of Nebraska. Their civil and political status, however, does not condition the power, authority, or duty of the United States to exert its powers of government to control their property, to protect them in their rights, to faithfully discharge its legal and moral obligations to them, and to execute every trust with which it is charged for their benefit. Matter of Heff, 197 U. S. 488, 509, 25 Sup. Ct. 506.49 L. Ed. 848; Buster v. Wright, 68 C. C. A. 505, 135 Fed. 947; Wallace *v.* Adams (C. C. A.) 143 Fed. 716, decided at this term. They are still members of their tribes and of an inferior and dependent race, of which the Supreme Court has said that "from their very weakness and helplessness, so largely due to the course of dealing of the federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen." U. S. v. Kagama, 118 U. S. 375, 384, 6 Sup. Ct. 1109, 30 L. Ed. 228. The experience of more than a century has demonstrated the fact that the unrestrained greed, rapacity, cunning, and perfidy of members of the superior race in their dealings with the Indians unavoidably drive them to poverty, despair, and war. To protect them from want and despair, and the superior race from the inevitable attacks which these evils produce, to lead them to abandon their nomadic habits and to learn the arts of civilized life, the government of the United States has long exercised the power granted to it by the Constitution (article 1, § 8, subd. 3) to reserve and hold in trust for them large tracts of land and large sums of money derived from the release of their rights of occupancy of the lands of the continent, to manage and control their property, to furnish them with agricultural implements, houses, barns, and other permanent improvements upon their lands, domestic animals, means of subsistence, and small amounts of money, and to provide them with physicians, farmers, schools and teachers. The Indian reservations, the funds derived from the release of the Indian right of occupancy, the lands allotted to individual Indians, but still held in trust by the nation for their benefit, the improvements upon these lands, the agricultural implements, the domestic animals and other property of like character furnished to them by the nation to enable and induce them to cultivate the soil and to establish and maintain permanent homes and families, are the means by which the nation pursues its wise policy of protection and instruction and exercises its lawful powers of government.

The power to tax is the power to destroy. The Constitution, the laws of the United States made in pursuance of it, and the government of the United States, in the execution of these laws, are supreme. They are superior to, and control, the Constitutions, the laws, and the governments of the states. The power of a state to tax the forts, the arsenals, the ships, the buildings, the lands, the funds, or any other means lawfully used by the nation to exert its legal powers, is inconsistent with its supremacy and subversive of the national government. Hence no such power exists, or can exist, in any state. Every instrumentality lawfully employed by the United States to execute its constitutional laws and to exercise its lawful governmental authority is necessarily exempt from state taxation and interference. McCullough v. Maryland, 6 Wheat. 316, 4 L. Ed. 479; Van Brocklin v. State of Tennessee, 117 U. S. 151, 155, 6 Sup. Ct. 670, 29 L. Ed. 845; Wisconsin Central Railroad Co. v. Price County, 133 U. S. 496, 504, 10 Sup. Ct. 341, 33 L. Ed. 687. It is for this reason that the Supreme Court decided that lands held by Indian allottees under Act Feb. 8, 1887, 24 Stat. 389, c. 119, † 5, within 25 years after their allotment, houses and other permanent improvements thereon, and the cattle, horses, and other property of like character which had been issued to the allottees by the United States and which they were using upon their allotments, were exempt from state taxation, and declared that "no authority exists for the state to tax lands which are held in trust by the United States for the purpose of carrying out its policy in reference to these Indians." U. S. v. Rickert, 188 U. S. 432, 441, 23 Sup. Ct. 478, 482, 47 L. Ed. 532. Why are not the proceeds of the sales of these allotted lands, which the United States causes to be deposited and held subject to its disposition, in a bank which it selects, for the benefit of those Indians equitably entitled thereto, equally held in trust by it for the same purpose and equally exempt from state taxation for the same reason?

The answer of the counsel for the county is: (1) Because these deposits are discharged of the trust by Act May 27, 1902, 32 Stat. 245, 275, c. 888, § 7 ; and (2) because the United States has no lawful authority to withhold these moneys from their beneficiaries or to control their disposition. Let us examine these positions. The lands which were sold were held by the complainant in trust to preserve them for the exclusive use and benefit of the respective Indian allottees and their heirs until the expiration of 25 years from the respective dates of their allotments, and then to convey them to the allottees respectively or their heirs "in fee discharged of said trust and free of all charge or incumbrance whatsoever." 22 Stat. 342, c. 434, § 6; 24 Stat. 389, c. 119, § 5. The undertaking to convey them at the end of the 25 years free of all charge or incumbrance imposed an obligation to keep them free from the burden or charge of state taxation, as well as of every other incumbrance.

U. S. v. Rickert, 188 U. S. 432, 23 Sup. Ct. 478, 47 L. Ed. 532. The act of May 27, 1902, provides that any heir of any Indian allottee to whom a trust or other patent containing restrictions on alienation has issued may sell and convey the lands inherited from such an allottee, "but all such conveyances shall be subject to the approval of the Secretary of the Interior and when so approved shall convey a full title to the purchaser the same as if a final patent without restriction upon alienation had been issued to the allottee," and that lands so conveyed shall thenceforth be subject to taxation by the state in which they are situated. 32 Stat. 275, c. 888, § 7. The authorized sale and conveyance of trust property by a trustee discharges the property sold from, and charges the proceeds of its sale in the hands or under the control of the trustee with, the trust. No change of form of property can divest it of a trust. The substitution of one kind of property for another, of goods for promissory notes, of lands for bonds, or of money for lands, does not destroy it. The substitute takes the nature of the original and stands charged with the same trust. Taylor v. Plumer, 3 Maule & Sel. 562, 574; In re Hallett's Estate, Knatchbull v. Hallett, 13 Chan. Div. 696, 717, 719, 733; Cook v. Tullis, 85 U. S. 332, 341, 21 L. Ed. 933; McLaughlin v. Fulton, 104 Pa. 161, 171; Third National Bank v. Stillwater Gas Co., 36 Minn. 75, 78, 30 N. W. 440; 2 Perry on Trusts, §§ 835, 836, 837, The act of May 27, 1902, contains nothing to withdraw these sales or their proceeds from the operation of this basic principle of equity jurisprudence. All the provisions of that act are in strict conformity to it, and there is no logical escape from the conclusion that, as long as the United States withholds the possession of these proceeds from those who are equitably entitled to the benefit of them and the term of the original trust continues, it holds these proceeds, as it held the lands which produced them, charged with the same trust to preserve them intact and to pay them to the cestuis que trust "free of all charge or incumbrance whatsoever," either by reason of taxation by any state or county or otherwise.

Nor is the complainant without lawful authority to hold these proceeds and to control their disposition in the same way that it held and controlled the lands in trust for the benefit of these Indian heirs. The act of 1902 authorized these heirs to sell and convey their inherited lands only when the proposed sales were approved by the Secretary of the Interior. It thereby vested in the Secretary plenary power to permit or to forbid the sales proposed. The whole is greater than any of its parts, and includes them all, and the authority to allow or to prohibit proposed sales necessarily included the power to consider and determine the terms and conditions on which such sales should be approved. By rules and regulations approved October 4, 1902, and amended September 16, 1904, and May 25, 1905, the Secretary provided that owners of in-

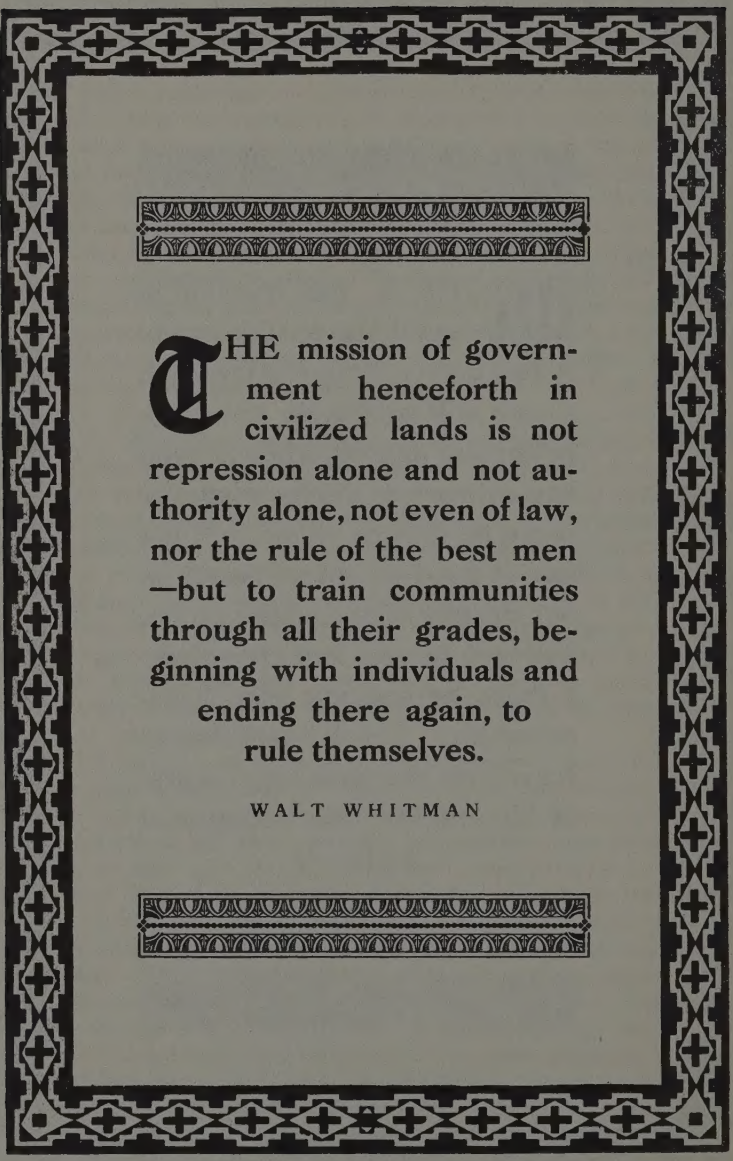
herited Indian lands might be permitted to sell them on condition that they agreed that the proceeds of such lands should be placed in one or more banks, which should furnish satisfactory bonds to guaranty the safety of the deposits, to the credit of each heir in proper proportion, subject to the checks of such heirs only when approved by the agent or officer in charge for amounts not exceeding $10 to each in any one month, and subject to their checks for larger amounts only when approved by the agent specifically authorized by the Commissioner of Indian Affairs. The acts of Congress authorized the Secretary to make these regulations for the purpose of carrying into effect the act of 1902, and, when made, they had the force of statutory enactments. Rev. St. §§441, 465 (U. S. Comp. St. 1901, pp. 252, 264); U. S. *v.* Eaton, 144 U. S. 688, 12 Sup. Ct. 764, 36 L. Ed. 591; Wilkins v. U. S., 96 Fed. 837, 37 C. C. A. 588. The Indians whose rights are under consideration made the sales of their lands subject to the conditions prescribed by these rules. The bank and a surety executed a bond in the sum of $50,000 to the United States, conditioned that it would pay the rate of interest upon the proceeds of the sales of these lands deposited with it which should be agreed upon by it and the Commissioner of Indian Affairs, and that it would pay over the deposits in the manner provided in the regulations of the Secretary of the Interior to which reference has been made. The proceeds of these sales were deposited with this bank under this bond and under these rules. These facts, the statutes, and the principles of equity jurisprudence which have been considered, have led our minds to these conclusions:

As the Secretary of the Interior was empowered to permit or forbid the sales of these inherited Indian lands, he had authority to determine upon what conditions he would allow such sales, and to prescribe and enforce the terms specified in his regulations upon this subject. The allotted lands were held in trust by the United States for the benefit of those to whom they were assigned, and their heirs, under the acts of August 7, 1882, and February 8, 1887. The proceeds of the sales of these lands have been lawfully substituted for the lands themselves by the trustee. The substitutes partake of the nature of the originals, and stand charged with the same trust. The lands and their proceeds, so long as they are held or controlled by the United States and the term of the trust has not expired, are alike instrumentalities employed by it in the lawful exercise of its powers of government to protect, support, and instruct the Indians, for whose benefit the complainant holds them, and they are not subject to taxation by any state or county.

The decree below must be reversed, and the cause must be remanded to the Circuit Court, with instructions to permit the defendants to answer the bill and to take further proceedings not inconsistent with the views expressed in this opinion. It is so ordered.

WORK is the mission of mankind on this earth. A day is ever struggling forward, a day will arrive, in some approximate degree, when he who has no work to do, by whatever name he may be called, will not find it good to show himself in our quarter of the solar system, but may go and look elsewhere if there be any idle planet discoverable. Let all honest workers rejoice that such law, the first of Nature, has been recognized by them.

GEORGE BERNARD SHAW



THE mission of government henceforth in civilized lands is not repression alone and not authority alone, not even of law, nor the rule of the best men —but to train communities through all their grades, beginning with individuals and ending there again, to rule themselves.

WALT WHITMAN